



Chris Devers, Chairman  
Pauma Band of Mission Indians of the Pauma-Yuima Reservation  
P.O. Box 369  
Pauma Valley, CA 92061  
Fax (760) 742-3422

Gary Armentrout  
Foxwoods Management Pauma, LLC  
P.O. Box 3777, Rt. 2  
Mashantucket, CT 06338  
Fax (860) 312-3329

Dear Chairman Devers and Mr. Armentrout:

I am pleased to inform you that I have approved the First Amended and Restated Management Agreement (the "Contract") between the Pauma Band of Mission Indians of the Pauma-Yuima Reservation and Foxwoods Management Pauma, LLC, dated March 13, 2008.

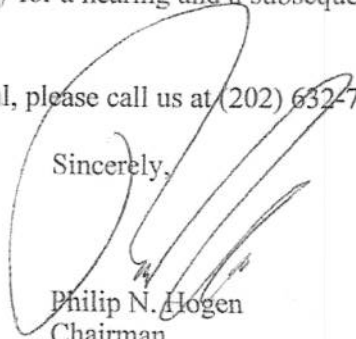
The Indian Gaming Regulatory Act and the regulations of the National Indian Gaming Commission (the "NIGC") require that the NIGC Chairman approve management contracts for gaming operations on Indian lands. Accordingly, you submitted the Contract as required by 25 U.S.C. § 2711 and 25 C.F.R. Part 531.

We have reviewed the Contract and other information submitted and determined that the standards of 25 C.F.R. Parts 531, 533 and 537 have been met. This letter and my signature on the Contract constitute such approval.

Please note that if we learn of any actions or conditions that violate the standards contained in 25 C.F.R. Parts 531, 533, 535, or 537, we may require modifications of, or may void, the approved Contract, after providing the parties with an opportunity for a hearing and a subsequent appeal to the NIGC as set forth in 25 C.F.R. Part 577.

Should you have any questions concerning this approval, please call us at (202) 632-7003.

Sincerely,

  
Philip N. Hogen  
Chairman

REGION I Solomon Building, 620 SW Main Street, Suite 212, Portland, OR 97205 Tel: 503.326.5095 Fax: 503.326.5092

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EXECUTION

APR 15 2008

**FIRST AMENDED AND RESTATED MANAGEMENT AGREEMENT**

**BETWEEN THE**

**PAUMA BAND OF MISSION INDIANS**

**OF THE PAUMA-YUIMA RESERVATION**

**AND**

**FOXWOODS MANAGEMENT PAUMA, LLC**

DATED AS OF MARCH 13, 2008

## **LIST OF EXHIBITS**

EXHIBIT A	Facility Site
EXHIBIT B-1	Manager Existing Cash Collateral Account Agreement
EXHIBIT B-2	Manager New Cash Collateral Account Agreement
EXHIBIT C	Manager Security Agreement
EXHIBIT D	Manager Working Capital Advance Note
EXHIBIT E	Minimum Payments Note
EXHIBIT F	Pending Band Litigation
EXHIBIT G	Existing Indebtedness
EXHIBIT H	Pending Manager Litigation
EXHIBIT I	Manager's Affiliates, Principal Owners, Officers and Directors
EXHIBIT J	Board of Directors
EXHIBIT K	Limited Guaranty- Manager
EXHIBIT L	Officer's Certificate, Foxwoods Development Company, LLC

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT has been entered into as of the 13 day of March, 2008, by and between the **PAUMA BAND OF MISSION INDIANS OF THE PAUMA-YUIMA RESERVATION** (the "Band"), and **FOXWOODS MANAGEMENT PAUMA, LLC**, a Delaware limited liability company ("FMP" or the "Manager") for the operation of a new gaming facility in the State of California.

### RECITALS

- A. The Band is a federally recognized Indian Tribe with sovereign powers of self-government, including the power to conduct gaming pursuant to the Indian Gaming Regulatory Act (the "IGRA").
- B. FMP is a Delaware limited liability company and is a wholly owned Subsidiary of Foxwoods Development Company, LLC, a Delaware limited liability company which is wholly owned by the Mashantucket Pequot Tribal Nation.
- C. The Band currently operates a gaming facility on lands which the United States holds in trust for the Band (the "Existing Facility") where the Band conducts Gaming pursuant to the IGRA and over which the Band possesses sovereign governmental powers.
- D. To improve the economic conditions of its members, to enable it to serve the social, economic, educational and health needs of the Band, to increase the revenues of the Band and to enhance the Band's economic self sufficiency and self determination, the Band intends to construct a new permanent gaming facility on its trust lands in which it will conduct all of its gaming (the "New Facility"). The Band intends to conduct Gaming pursuant to the IGRA at the New Facility to fulfill these objectives.
- E. Simultaneously with this Agreement, the Band is entering into a First Amended and Restated Development Agreement with Foxwoods Development Pauma, LLC ("Developer"), pursuant to which Developer will plan, finance and develop the New Facility for the Band. The Band seeks a third party to manage the New Facility. Manager has represented to the Band that it has the managerial expertise to oversee and manage the conduct of gaming at the New Facility.
- F. The Band desires to continue to operate the Existing Facility without a management agreement until such time as the New Facility is opened, at which time it will close the Existing Facility, and the Band desires to grant Manager the exclusive right and obligation to manage, operate and maintain the New Facility, as described in this Agreement.
- G. FMP and the Band entered into a Management Agreement (the "Original



Management Agreement") dated as of March 22, 2006. This Agreement incorporates certain amendments to the Original Management Agreement agreed to by the parties and is intended to conform this Agreement to the requirements of the National Indian Gaming Commission.

H. This Agreement is entered into pursuant to the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. Section 2701 et seq. (the "IGRA") as that statute may be amended. All gaming conducted at the New Facility will at all times comply with the IGRA, applicable Band law and the Compact.

#### ARTICLE 1. DEFINITIONS

As they are used in this Agreement, the terms listed below shall have the meaning assigned to them in this Section:

"Affiliate" means any Subsidiary of a Person, or any Person which, directly or indirectly, controls, is controlled by, or is under common control with such Person. For purposes of this definition, the word control means possession of the power to direct or cause the direction of the management and policies of a Person, by voting securities, by contract or otherwise.

"Agreed Courts" has the meaning described in Section 12.1(b).

"Agreement" shall mean this First Amended and Restated Management Agreement.

"Articles of Association" shall mean the Articles of Association of the Pauma Band of Luiseno Mission Indians, ratified on June 23, 1968, as amended.

"Band Event of Default" has the meaning described in Section 10.1.

"Band Governmental Action" means any resolution, ordinance, statute, regulation, order or decision of the Band, the Tribal Gaming Authority, the Board of Directors, or any instrumentality or agency of the Band, regardless of how constituted, that has the force of law.

"Band Interest Rate" shall mean [

"Band Working Capital Advances" shall have the meaning set out in Section 5.5 below.

"BIA" shall mean the Bureau of Indian Affairs of the Department of the Interior of the United States of America.

"Board of Directors" shall mean the five (5) member committee elected by the Band and authorized to represent the Band and take action and give direction in accordance with the terms of this Agreement, which Board shall be elected by and shall act in accordance with the authorization and procedures set forth in Exhibit J.

"California UCC" shall mean the California Uniform Commercial Code, as the same may be amended from time to time.

"Capital Budget" shall mean the capital budget described in Section 3.19.

"Capital Replacement(s)" shall mean any alteration or rebuilding or renovation of the New Facility, and any replacement of Furnishings and Equipment, the cost of which is capitalized and depreciated rather than being expensed under GAAP.

"Capital Replacement Reserve" shall mean the reserve described in Section 3.21, into which periodic contributions are paid pursuant to Section 3.22.

"Cash Collateral Accounts" shall mean the Existing Cash Collateral Account and the New Cash Collateral Account.

"Claims" has the meaning described in Section 12.1(b).

"Class II Gaming" shall mean Class II Gaming as defined in the IGRA.

"Class III Gaming" shall mean Class III Gaming as defined in the IGRA.

"Collateral" shall mean (i) the Net Revenues of the Existing Facility; (ii) the Net Revenues of the Enterprise; (iii) the Cash Collateral Accounts and any other deposit accounts in the name of the Band that collect gross revenues and other proceeds connected with or arising from the operation of the Existing Facility or the Enterprise, the sale of food and beverage and retail products, and all other activities of the Existing Facility or the Enterprise; (iv) the Furnishings and Equipment of the Facilities, as well as the proceeds and products thereof, whether now existing or hereinafter acquired, and all replacements and substitutions therefore and accessions thereto. The Collateral shall exclude any interest in reservation land and trust land, and shall exclude any distributions to the Band properly made pursuant to this Agreement or any distributions from Net Revenues of the Existing Facility prior to a Band Event of Default and shall specifically exclude

2 The Collateral is secured pursuant to the Manager Account Control Agreements and the Manager Security Agreement. 64

"Collateral Agreements" shall mean any agreements defined as collateral agreements under 25 USC Section 2711(a)(3) and regulations issued thereto at 25 C.F.R. Section 502.5.

"Commencement Date" shall mean the first date that Gaming is conducted at the New Facility pursuant to the terms of this Agreement.

"Compact" shall mean the Compact between the Band and the State signed by the Band on April 27, 2000, and by the State on May 1, 2000, as amended on June 21, 2004 and as the same may, from time to time, be amended; or such other compact or consent decree that may be substituted therefor.

"Compact Payments" shall mean the regulatory costs and tribal contributions the Band is required to pay to the State, the County of San Diego, and any other governmental entity pursuant to the Compact.

"Compensation" shall mean the direct salaries and wages paid to, or accrued for the benefit of, all Enterprise Employees, including incentive compensation and bonuses, together with all fringe benefits payable to or accrued for the benefit of such Enterprise Employees, including employer's contribution under F.I.C.A., unemployment compensation or other employment taxes, pension fund contributions, workers' compensation, group life, accident and health insurance premiums and costs, and profit sharing, severance, retirement, disability, relocation, housing and other similar benefits.

"Confidential Information" shall mean the information described in Section 17.15.

"Credit Agreement" shall mean the Credit Agreement between the Band and Bank of America, N.A., as Administrative Agent and lender, and the other lenders party thereto, dated as of June 13, 2005, setting forth the terms of the Existing Bank Loan, as the same may have been amended from time to time with the consent of the Manager.

"Default Period" shall have the meaning set forth in Section 5.7.

"Developer" shall mean Foxwoods Development Pauma, LLC.

"Developer Account Control Agreements" shall mean the Developer Existing Cash Collateral Account Agreement and the Developer New Cash Collateral Account Agreement, as the same may be amended from time to time. "Developer Existing Cash Collateral Account Agreement" shall mean the collateral agreement granting Developer a security interest in the Existing Cash Collateral Account and perfecting such interest,

which shall be senior to the Manager's security interest and subordinate to any security interest granted under the Credit Agreement to the extent provided in the Subordination Agreement, as the same may be amended from time to time.

"Developer New Cash Collateral Account Agreement" shall mean the collateral agreement granting Developer a security interest in the New Cash Collateral Account and perfecting such interest, which shall be senior to the Manager's security interest and subordinate to any security interest granted under the Senior Financing Loan Agreement to the extent provided in applicable subordination agreements, as the same may be amended from time to time.

"Development Agreement" shall mean the First Amended and Restated Development Agreement of near or even date, by and between Foxwoods Development Pauma, LLC and the Band.

"Development Board" shall mean the five (5) member committee elected by the Band and authorized to represent the Band and take action and give direction in accordance with the terms of the Development Agreement.

"Development Loan" shall mean the loan provided to the Band by Developer pursuant to the Development Agreement.

"Disbursement Accounts" shall mean the bank account or accounts described in subsection 4.1(c).

"Effective Date" shall have the meaning provided in Section 17.24.

"Emergency Condition" shall have the meaning set forth in Section 3.20.

"Enterprise" shall mean the unincorporated enterprise of the Band created by the Band for the purposes of conducting Gaming at the New Facility and which shall include all other non-Gaming activities conducted at the Facility Site after the Commencement Date (such activities to include the operation of a hotel and conference center and beverage, cigarette and alcohol and other retail sales, and entertainment and ancillary activities); such Enterprise to have separately maintained accounts (including bank accounts), books and records from those of the Band.

"Enterprise Accounts" shall mean those accounts described in subsection 4.1(a).

"Enterprise Employee" shall mean all employees who work at the New Facility.

"Enterprise Employee Policies" shall mean those employee policies described in subsection 3.9(b).

"Enterprise Investment Policy" shall have the meaning described in subsection 4.1(a).

"Enterprise Name" has the meaning described in Section 6.1.

"Existing Bank Loan" shall mean the existing loan evidenced by the Credit Agreement and entered into by the Band to refinance pre-existing obligations of the Band unrelated to the Enterprise or New Facility.

"Existing Bank Loan Credit Cap" shall mean [

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"Existing Cash Collateral Account" shall mean the collateral account in favor of Bank of America, N.A., entered into pursuant to the Credit Agreement, which collects all gross revenues and other proceeds connected with or arising from the operation of the Existing Facility, the sale of all food and beverage and retail products, and all other activities of the Existing Facility.

"Existing Facility" shall mean the existing gaming facility of the Band located on the Facility Site.

"Facilities" shall mean the Existing Facility and the New Facility.

"Facility Site" shall mean the parcel of trust land in Pauma Valley, California on which the Existing Facility is located and on which the New Facility will be located, as more fully described on the attached Exhibit A.

"FBI" has the meaning described in Section 14.2.

"Fiscal Year" shall mean commencing as of the Commencement Date, each twelve (12) month period or portion thereof ending on September 30 of each year as currently used by the Band as the fiscal year for its financial statements.

"Foxwoods Development Company" shall mean Foxwoods Development Company, LLC, a Delaware limited liability company which is wholly owned by the Mashantucket Pequot Tribal Nation.

"Force Majeure" shall mean acts of God, fire, flood, storm, earthquake, war, civil disorder, governmental acts, regulations, orders or restrictions, accidents not caused by a party's negligence, strikes or labor disturbances.

"Furnishings and Equipment" shall mean all furniture, furnishings and equipment required for the operation of the Enterprise in accordance with the standards set forth in this Agreement, whether now existing or hereafter acquired, including, without limitation:

- (i) cashier, money sorting and money counting equipment, surveillance and communication equipment, and security equipment;
- (ii) Gaming Equipment;
- (iii) office furnishings and equipment;
- (iv) specialized equipment necessary for the operation of any portion of the Enterprise for accessory purposes, including equipment for kitchens, laundries, dry cleaning, cocktail lounges, restaurants, public rooms, commercial and parking spaces, and recreational facilities;
- (v) hotel equipment; and
- (vi) all other furnishings and equipment hereafter located and installed in or about the Facilities which are used in the operation of the Enterprise.

"Gaming" shall mean any and all activities defined as Class II and Class III Gaming.

"Gaming Equipment" shall mean equipment permitted under the IGRA for Gaming, including without limitation slot machines, video games of chance, table games, bingo equipment and other Class II and Class III Gaming equipment.

"Gaming Ordinance" shall mean the Pauma-Yuima Band of Mission Indians Gaming Ordinance, duly adopted on June 11, 2000, and amended on April 22, 2004 and on December 29, 2004, as it may be further amended from time to time, and all duly enacted regulations of the TGA.

"General Council" shall mean the Band's General Council, the governing body of the Band.

"General Manager" shall mean the most senior executive responsible for directing the operation of the Enterprise.

"Generally Accepted Accounting Principles" or "GAAP" shall mean as of any date of determination, accounting principles set forth as generally accepted in the United States of America in currently effective opinions of the Accounting Principles Board of

the American Institute of Certified Public Accountants and in statements of the Financial Accounting Standards Board or the Governmental Accounting Standards Board, as applicable, together with interpretive rulings and bulletins issued in connection therewith. The term "consistently applied," as used in connection therewith, means that the accounting principles applied are consistent in all material respects to those applied at prior dates or for prior periods.

"Governmental Authority" means (a) any federal, tribal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court, administrative tribunal or public utility, or (d) any arbitration tribunal or other non-governmental authority to whose jurisdiction a Person has consented.


"Governmental Approvals" shall mean any authorizations or approvals required from a Governmental Authority.


"Gross Gaming Revenue (Win)" shall mean the net win from gaming activities which is the difference between gaming wins and losses before deducting costs and expenses.

"Gross Revenues" shall mean all revenues of any nature derived directly or indirectly from the Enterprise including, without limitation, Gross Gaming Revenue (Win), food and beverage sales and other rental or other receipts from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees and concessionaires provided that such lessees, sublessees, licensees and concessionaires are not Affiliates or Insiders of Manager), and revenue recorded from Promotional Allowances, but excluding any Permitted Taxes.

"Guaranty Amount" shall have the meaning described in Section 9.4(c).

"House Bank" shall mean the amount of cash, chips, tokens and plaques that Manager from time to time determines necessary to have at the New Facility daily to meet its cash needs.

"Inclusion Amount" shall mean, 

 The term "Inclusion Amount" appears in Section 5.1 and it relates to the computation of the Management Fee. The purpose of this definition is to



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“IGRA” shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. Section 2701 et seq. as it may from time to time be amended, and including any regulations thereunder issued by the National Indian Gaming Commission.

“Indebtedness” means at any date and without duplication (i) all indebtedness or other obligations of a Person for borrowed money or for the deferred purchase price of property or services; (ii) all items (except items of capital stock or capital paid-in surplus or retained earnings) which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of the balance sheet of the Band as of the date on which such indebtedness is to be determined, including the obligations and liabilities of the Band for borrowed money and any capital lease; (iii) all indebtedness secured by any mortgage, pledge, lien or conditional sale or other title retention agreement to which any property or asset held by the Band is subject, whether or not the indebtedness so secured thereby shall have been assumed; (iv) all indebtedness of others which the Band has directly or indirectly guaranteed, endorsed, or sold with recourse or agreed, contingent or otherwise, to purchase or repurchase or otherwise acquire, or in respect of which the Band has agreed to supply or advance funds (whether by way of loan, stock purchase, capital, contributions or otherwise) or otherwise to become directly or indirectly liable; (v) the unfunded or unreimbursed portion of all letters of credit issued for the account of the Band; and (vi) all other indebtedness of the Band on which interest charges are customarily paid or accrued.

“Insider” shall mean any manager, officer or Person in control of the Manager, any partnership in which the Manager is a general partner, any general partner of the Manager, any relative of a general partner, director, officer or Person in control of the Manager, any affiliate of the Manager, any Insider of an affiliate of the Manager or any managing agent of the Manager and shall include Persons that become Insiders after the date of this Agreement, whether as the result of a merger, acquisition, restructuring or otherwise.

“Internal Control Systems” shall mean the systems described in Section 3.24.



"Land" shall mean various parcels of Land contiguous to or near the Facility Site which might be acquired to enhance access to the Facility Site and for other governmental purposes.

"Land Agreement" shall mean the Land Agreement of near or even date between Developer and the Band relating to the purchase, leasing and sale of the Land.

"Legal Requirements" shall mean any and all present and future judicial, administrative, and tribal rulings or decisions, and any and all present and future federal, state, local and tribal laws, ordinances, rules, regulations, permits, licenses and certificates, in any way applicable to the Band, Manager, the Facility Site, the New Facility and the Enterprise, including without limitation, the IGRA, the Compact, and the Gaming Ordinance.

"Limited Recourse" shall mean that the Manager Working Capital Advances, the Minimum Payments Advances, the Management Fee, and all liabilities of the Band, the Enterprise or the Tribal Gaming Authority under or related to this Agreement and the other Transaction Documents, and any related awards, judgments or decrees, shall be payable solely out of the Collateral, and the proceeds thereof, and shall be a limited recourse obligation of the Band; provided, that in no event shall Manager have recourse to any real property or any reservation land or trust property, nor shall Manager have recourse to distributions to the Band properly made under this Agreement or any distributions from Net Revenues of the Existing Facility.

"Loans" shall mean the Development Loan, the Manager Working Capital Advances, the Minimum Payments Advances, and the Senior Financing Loan.

"Management Agreement" shall mean this Agreement and may be referred to herein as the "Agreement".

"Management Fee" shall mean the management fee described in Section 5.1.

"Management Fee Adjustment" shall have the meaning set forth in Section 5.1.

"Management Fee Adjustment Reserve Account" shall have the meaning set forth in Section 5.1.

"Manager" shall mean Foxwoods Management Pauma, LLC, a Delaware limited liability company.

"Manager Account Control Agreements" shall mean the Manager Existing Cash Collateral Account Agreement and the Manager New Cash Collateral Account, as the same may be amended from time to time.

"Manager Existing Cash Collateral Account Agreement" shall mean the collateral agreement granting Manager a security interest in the Existing Cash Collateral Account and perfecting such interest, which shall be subordinated to Developer's security interest and to any security interest under the Credit Agreement to the extent provided in the Subordination Agreement, and which shall be in the form attached as Exhibit B-1, as the same may be amended from time to time.

"Manager New Cash Collateral Account Agreement" shall mean the collateral agreement granting Manager a security interest in the New Cash Collateral Account and perfecting such interest, which shall be subordinated to the Developer's security interest and to any security interest granted under the Senior Financing Loan Agreement to the extent provided in applicable subordination agreements, and which shall be in the form attached as Exhibit B-2, as the same may be amended from time to time.

"Manager Event of Default" has the meaning described in Section 10.2.

"Manager Licensing Decision" has the meaning described in Section 12.6(a).

"Manager Security Agreement" shall mean the security agreement to be executed by the Band in favor of Manager, granting Manager a security interest in the Collateral subordinated to Developer's security interest and any security interest under the Credit Agreement, and in the Cash Collateral Accounts, which agreement shall be in the form attached hereto as Exhibit C, as the same may be amended from time to time.

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"Marks" means all trade names, trade marks and service marks used by the New Facility or the Enterprise.

"Material Breach" means a failure of any party to perform any material duty or obligation on its part, if such party fails to (i) cure the specified default within thirty (30) days following receipt of the notice provided under Section 10.3, or (ii) if the default is not capable of being cured within 30 days, commences such cure within thirty (30) days,

proceeds diligently to complete the cure, and completes the cure no later than ninety (90) days after receipt of such notice.

"Member of the Band Government" shall mean any member of the General Council, Board of Directors, the TGA or any independent board or body created to oversee any aspect of Gaming.

"Minimum Balance" shall mean the amount described in subsection 4.1(a).

"Minimum Guaranteed Monthly Payment" shall mean the payment due the Band each month commencing in the month after the Commencement Date occurs in accordance with 25 U.S.C. Section 2711(b)(3) and Section 5.8 hereof.

"Minimum Guaranteed Payment Advances" shall have the meaning set out in Section 5.9 and shall be subject to repayment to the limited extent provided in that section.

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"Monthly Distribution Payment" shall have the meaning set forth in Section 5.7.

"National Indian Gaming Commission" or "NIGC" means the commission established pursuant to 25 U.S.C. Section 2704.

"Net Revenues of the Enterprise" shall mean the sum of "Net Revenues (gaming)" and "Net Revenues (other)".

"Net Revenues of the Existing Facility" shall mean the net revenues of the Existing Facility, calculated in the same manner as Net Revenues of the Enterprise.

"Net Revenues (gaming)" shall mean the Gross Gaming Revenue (Win), of the Enterprise from Class II or Class III gaming less all gaming related Operating Expenses, excluding the Management Fee, and less the retail value of any Promotional Allowances, and less the following revenues actually received by the Enterprise and included in Gross Revenues:

- (i) any gratuities or service charges added to a customer's bill;
- (ii) any credits or refunds made to customers, guests or patrons;

- (iii) any sums and credits received by the Enterprise for lost or damaged merchandise;
- (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to a governmental or quasi governmental entity, including without limitation any Permitted Taxes;
- (v) any proceeds from the sale or other disposition of furnishings and equipment or other capital assets;
- (vi) any fire and extended coverage insurance proceeds other than for business interruption;
- (vii) any condemnation awards other than for temporary condemnation; and
- (viii) any proceeds of financing or refinancing.

It is intended that this provision be consistent with 25 U.S.C. Section 2703(9).

"Net Revenues (other)" shall mean all Gross Revenues of the Enterprise from all other sources in support of Class II or Class III gaming not included in "Net Revenues (gaming)," such as food and beverage, hotel, entertainment and retail (in each case, only to the extent such Gross Revenues are derived from activities included in the Enterprise, in accordance with the definition thereof), less all Operating Expenses, excluding the Management Fee and less the retail value of Promotional Allowances, if any, and less the following revenues actually received by the Enterprise and included in Gross Revenues:

- (i) any gratuities or service charges added to a customer's bill;
- (ii) any credits or refunds made to customer, guests or patrons;
- (iii) any sums and credits received by the Enterprise for lost or damaged merchandise;
- (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to a governmental or quasi governmental entity, including without limitation any Permitted Taxes;
- (v) any proceeds from the sale or other disposition of furnishing and equipment or other capital assets;

- (vi) any fire and extended coverage insurance proceeds other than for business interruption;
- (vii) any condemnation awards other than for temporary condemnation; and
- (viii) any proceeds of financing or refinancing.

It is intended that this provision be consistent with 25 U.S.C. Section 2703(9).

"New Cash Collateral Account" shall mean the collateral account in favor of Developer and Manager established under subsection 4.1(b) of the Management Agreement.

"New Facility" shall mean all temporary and permanent buildings, structures and improvements located on the Facility Site and all fixtures, Furnishings and Equipment attached to, forming a part of, or necessary for the operation of the Enterprise.

"NIGC Approval" means the written approval by the NIGC of this Agreement.

"NIGC Disapproval" means a written determination by the Chairman of the NIGC not to approve this Agreement expressly because of the individual disqualifying factors contained in 25 C.F.R. §§533.6(b) and (c), , if within one hundred twenty (120) days after notification of the NIGC decision Manager has not cured the reason for such unsuitability.

"Operating Budget and Annual Plan" shall mean the operating budget and plan described in Section 3.15.

"Operating Expenses" shall mean all expenses of the operation of the Enterprise, pursuant to GAAP, including but not limited to the following:

- (i) the Compensation of Enterprise Employees, Senior Employees, and employees of the Manager who work full-time at the New Facility, and including, but only to the extent approved by the Board of Directors, employees of Manager and Affiliates of Manager who are providing services to the New Facility on a part-time basis;
- (ii) Operating Supplies for the Enterprise;
- (iii) utilities;
- (iv) repairs and maintenance of the New Facility (excluding Capital Replacements)

- (v) interest on the Loans, the Existing Bank Loan and all other loans or capital leases pertaining to the New Facility and the Enterprise;
- (vi) interest on installment contract purchases or other interest charges on debt approved by the Board of Directors;
- (vii) insurance and bonding;
- (viii) advertising and marketing, including busing and transportation of patrons to the New Facility;
- (ix) accounting, audit, consulting, legal and other professional fees;
- (x) fire protection, police services, and security costs;
- (xi) operating lease payments for Furnishings and Equipment, participation payments made to Gaming Equipment manufacturers or distributors, and capital lease payments properly expensed under GAAP;
- (xii) trash removal;
- (xiii) cost of goods sold;
- (xiv) other expenses designated as Operating Expenses in accordance with the accounting standards as referred to in subsection 4.3(c);
- (xv) expenses specifically designated as Operating Expenses in this Agreement;
- (xvi) depreciation and amortization of the New Facility based on an assumed 40 year life, and depreciation and amortization of all other assets in accordance with GAAP;
- (xvii) recruiting and training expenses;
- (xviii) fees due to the NIGC under the IGRA;
- (xix) any required payments to or on behalf of the State, any local governments made by or on behalf of the Enterprise or the Band pursuant to the Compact or any related consent decree, or pursuant to any agreement with the State or any county or local government;

(xx) any budgeted charitable contributions by the Enterprise for the benefit of charities located or providing services in the vicinity of the Facility Site;

(xxi) Pre-opening Expenses, which shall be capitalized and treated as an expense during the first year after opening; and

(xxii) reasonable charges, assessments, fines or fees imposed by governmental entities of the Band which are directly related to the cost of Tribal governmental regulation of public health, safety or welfare; provided that the Operating Expenses shall not include any Permitted Taxes and further provided that any charges or assessments imposed by the Band for services performed for the Enterprise shall be on terms at least as favorable to the Enterprise as would be the case in an arm's length transaction between unrelated parties of equal bargaining power, and any costs in excess of such terms shall not be Operating Expenses.

(xxiii) necessary and reasonable costs of the TGA as set forth in the Operating Budget and Annual Plan.

Notwithstanding the foregoing or any other provision of this Agreement, costs related to the Land, including but not limited to, taxes, fees, legal expenses, lease payments or debt service related to Land acquisition, shall not be considered Operating Expenses.

"Operating Supplies" shall mean food and beverages (alcoholic and nonalcoholic) and other consumable items used in the operation of a casino, such as playing cards, tokens, chips, plaques, dice, fuel, soap, cleaning materials, matches, paper goods, stationary and all other similar items.

"Permitted Taxes" shall mean taxes, fees, assessments or other charges imposed by the Band that are permitted under Section 7.2.

"Person" shall include individuals, firms, corporations, associations, partnerships, joint ventures, governmental units and all other entities of every type and nature.

"Pre-Opening Budget" shall have the meaning described in Section 3.14.

"Pre-Opening Expenses" shall have the meaning described in Section 3.14.

"Prime Rate" as used herein shall mean the fluctuating interest rate per annum equal to



"Project" shall mean the development and construction of the New Facility, which shall be a modern, attractive building constructed to contain approximately 2,500 gaming devices, up to a 500 room hotel (provided, that the number of hotel rooms may be increased upon agreement of the parties), conference and meeting facilities, related food and beverage outlets, retail sales outlets and entertainment amenities, along with necessary parking, utilities and related infrastructure.

"Promotional Allowances" shall mean the retail value of food, non-alcoholic beverages, hotel rooms, entertainment, merchandise, and tokens for gaming, provided to patrons at no or reduced cost as promotional items.

"Relative" shall mean an individual who is related as a spouse, father, mother, son or daughter.

"Senior Employees" shall have the meaning described in Section 3.9(c).

"Senior Financing Lender" shall mean the lender or lenders providing the Senior Financing Loan.

"Senior Financing Loan" shall mean the loan or loans provided to the Band by one or more third-party financial institutions or other lenders pursuant to the Development Agreement.

"Senior Financing Loan Agreement" shall mean the loan agreement or agreements evidencing the Senior Financing Loan.

"Specific Performance Restriction" shall have the meaning set forth in Section 12.2(c).

"State" shall refer to the State of California.

"Subordination Agreement" shall mean the certain Subordination Agreement by and among the Band, the Developer and Bank of America, N.A., as Administrative Agent and lender, as the same may be amended from time to time.

"Subsidiary" means any corporation, association, trust or other business entity of which a Person owns, directly or indirectly, a majority of the outstanding voting stock, membership interests or other equity interests.

"Term" shall mean the term of this Agreement as described in Section 2.2.

"Transaction Documents" shall mean, individually or collectively, as the context may require, this Agreement, the Manager Account Control Agreement, the Manager



Security Agreement, the Manager Working Capital Advance Note, and the Minimum Payments Note, each as heretofore and hereafter amended.

"Tribal Distributions" shall mean Monthly Distribution Payments, Minimum Guaranteed Monthly Payments and any other payments received by the Band from the Enterprise pursuant to or in connection with this Agreement.

"Tribal Gaming Authority" or "TGA" shall mean the Pauma-Yuima Gaming Commission (also known as the Pauma Gaming Commission) which was created by the General Council pursuant to Gaming Regulation 012, Pauma Gaming Commission, to regulate the Class II and Class III Gaming of the Band in accordance with the Compact, the IGRA and the Gaming Ordinance.

"Tribal Revenue Allocation Plan" shall mean the revenue allocation plan of the Band developed pursuant to the IGRA and approved by the Secretary of the Interior pursuant to 25 U.S.C. § 2710(a)(3).

## ARTICLE 2. ENGAGEMENT OF MANAGER; COMPLIANCE

In consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

2.1 Engagement of Manager. The Band hereby retains and engages Manager as the exclusive manager of the Enterprise pursuant to the terms and conditions of this Agreement, and Manager hereby accepts such retention and engagement, subject to receipt of all necessary regulatory approvals.

2.2 Term. The term of this Agreement shall begin on the date this Agreement is approved by the Chairman of the NIGC, and unless earlier terminated in accordance with its terms, continue until a date which is [ ] from the Commencement Date. 64

2.3 Status of Facility Site. The Facility Site is on land held in trust by the United States of America for the benefit of the Band and is eligible for the conduct of Gaming pursuant to the IGRA and the Compact. The Band covenants, during the term hereof, that Manager shall and may peaceably have complete access to and presence in the New Facility in accordance with the terms of this Agreement and applicable tribal regulations, free from molestation, eviction and disturbance by the Band or by any Person; provided, however, that such right of access to and presence in the New Facility shall cease upon the termination of this Agreement pursuant to its terms. The Manager covenants, during the term hereof, that the members of the Board of Directors and other authorized members of the Band shall and may peaceably have complete access to and presence in the New Facility in accordance with the terms of this Agreement and

applicable tribal regulations, free from molestation, eviction and disturbance by the Manager.

2.4 Manager Compliance with Law; Licenses. Manager covenants that it will at all times comply with Legal Requirements, including the Gaming Ordinance, the IGRA, the Compact, State statutes, to the extent applicable, and any licenses and certifications issued under any of the foregoing. Notwithstanding any other provisions of this Agreement, Manager's exercise of its responsibilities and authority under this Agreement relating to employees, vendors, financial sources and other contractors in connection with the operation and management of the Enterprise are subject to the licensing authority of the TGA. The TGA shall not unreasonably withhold, delay, withdraw, qualify or condition such licenses as the TGA is authorized to issue. Nothing in this Agreement shall be construed as limiting the independence or regulatory authority of the TGA as established under the Gaming Ordinance, the IGRA, the Compact or applicable state gaming regulations. Except as provided in Article 12 of this Agreement, decisions and actions of the TGA may only be reviewed in accordance with the provisions of the Gaming Ordinance.

2.5 Compliance with Compact. The parties shall at all times comply with the provisions of the Compact.

2.6 Fire and Safety. Manager shall ensure that the New Facility shall be maintained in compliance with all applicable Compact requirements and Band law. Nothing in this Section shall grant any jurisdiction to the State or any political subdivision thereof over the Facility Site or the New Facility. The Manager shall be responsible for arranging fire protection, police and security services for the New Facility. The Band in the future may choose to establish its own fire and police departments, and in such event Manager shall contract with the Band for provision of fire protection and police services (but not security services), provided that the allocated cost of such services is reasonable and not greater than the cost of such services if provided by other jurisdictions.

2.7 Compliance with the National Environmental Policy Act. With the assistance of Manager, the Band shall supply the NIGC with all information necessary for the NIGC to comply with any regulations of the NIGC issued pursuant to the National Environmental Policy Act (NEPA).

2.8 Commencement Date. Manager shall memorialize the Commencement Date in a writing signed by Manager and delivered to the Band and to the Chairman of the NIGC.

### ARTICLE 3. BUSINESS AND AFFAIRS OF THE ENTERPRISE

3.1 Manager's Authority and Responsibility. Manager shall conduct and direct

all business and affairs in connection with the day-to-day operation, management and maintenance of the Enterprise and the New Facility, including the establishment of operating days and hours. It is the parties' intention that the Enterprise be open 24 hours daily, seven (7) days a week. Manager is hereby granted the necessary power and authority to act, through the General Manager, in order to fulfill all of its responsibilities under this Agreement. Manager hereby accepts such retention and engagement. Nothing herein grants or is intended to grant Manager a titled interest to the New Facility or to the Enterprise. The Band shall have the sole proprietary interest in and ultimate responsibility for the conduct of all Gaming conducted by the Enterprise, subject to the rights and responsibilities of Manager under this Agreement.

3.2 [Intentionally Omitted].

3.3 Physical Plant Administration. In managing, operating, maintaining and repairing the Enterprise and the New Facility, Manager shall use reasonable measures for the orderly physical administration, management, and operation of the Enterprise and the New Facility, including without limitation cleaning, painting, decorating, plumbing, carpeting, grounds care and such other maintenance and repair work as is reasonably necessary, and implementing and overseeing Capital Replacements pursuant to the approved Capital Budget.

3.4 Contracts in Band's Name Doing Business as the Enterprise and at Arm's Length. Manager is authorized to make, enter into, modify or amend, and perform in the name of and for the account of the Band, doing business as the Enterprise, such contracts deemed necessary by Manager to perform its obligations under this Agreement, including without limitation purchase orders, equipment and retail leases, contracts for services, including utilities, and maintenance and repair services, provided such contracts comply with the terms and conditions of this Agreement and applicable Legal Requirements, and provided such contracts do not obligate the Enterprise to pay sums not approved in the Operating Budget or the Capital Budget. Contracts for the operations of the Enterprise shall be entered into in the name of the Band, doing business as the Enterprise, and signed by the General Manager and the General Manager is hereby irrevocably authorized to sign such agreements and other documents on behalf of the Band during the term hereof. Any contract, excluding contracts for capital expenditures, requiring an expenditure in any year in excess of [ ] or such higher amount as may be set by the Board of Directors, shall be approved by the Board of Directors, provided, however, that any contracts for expenditures identified in the approved Operating Budget shall not require further approval by the Board of Directors. Manager shall advise the Board of Directors of any contract entered into by the Enterprise, excluding contracts for capital expenditures, requiring an expenditure in any year in excess of [ ]. Neither the Band nor the Enterprise shall enter into any transaction of any kind with any Affiliate or Insider of the Manager other than transactions on terms at least as favorable to the Enterprise as would be the case in an arm's length transaction

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between unrelated parties of equal bargaining power, the terms of which are disclosed to the Board of Directors in writing. Nothing contained in this Section 3.4 shall be deemed to be or constitute a waiver of the Band's sovereign immunity and Manager shall have no authority under any circumstance to waive the Band's sovereign immunity or to consent to the jurisdiction of any court or regulatory body, absent the consent of the General Council.

3.5 Enterprise Operating Standards. Manager shall use its best efforts to operate the Enterprise in a proper, efficient and competitive manner in accordance with operating standards which are consistent with the highest operating standards of the casino, hospitality and resort industries.

3.6 Security and Surveillance. Manager shall provide for appropriate security for the operation and protection of the Enterprise. All aspects of the New Facility security shall be the responsibility of Manager, and shall comply with relevant legal requirements of the Compact, the Gaming Ordinance and the TGA. Any security officer shall at the request of the Board of Directors be bonded and insured in an amount commensurate with his or her enforcement duties and obligations. The TGA shall be responsible for all surveillance operations at the New Facility; provided, however, that Manager shall be accorded input into surveillance policies and operation, and the TGA shall cooperate with requests of Manager to conduct particular surveillance operations, and shall confer with Manager regarding the results of such operations so long as the operations so requested do not unreasonably interfere with or jeopardize ongoing investigations of the TGA.

3.7 [Intentionally Omitted].

3.8 Alcoholic Beverages and Tobacco Sales. During the term of this Agreement alcoholic beverages and tobacco may be served and used at the New Facility in accordance with applicable Legal Requirements.

3.9 Employees.

(a) Manager's Responsibility. The Manager shall have, subject to the terms of this Agreement, the exclusive responsibility and authority to direct the selection, control and discharge of all employees performing regular services for the Enterprise in connection with the maintenance, operation, and management of the Enterprise and the New Facility and any activity upon the Facility Site; and the exclusive responsibility for determining whether a prospective employee is qualified and the appropriate level of Compensation to be paid, except that the TGA shall have the exclusive right to determine licensing qualifications.

(b) Enterprise Employee Policies. The Manager shall prepare a draft of personnel policies and procedures (the "Enterprise Employee Policies"), including a job

classification system with salary levels and scales, which policies and procedures shall be subject to approval by the Board of Directors. Enterprise employees are employed on an "at-will" basis unless otherwise provided in a separate, written agreement between the Enterprise and any such employee and, unless expressly stated otherwise, nothing contained in this Agreement or the Enterprise Employee Policies shall be construed to affect the "at-will" nature of employment with the Enterprise. The Enterprise Employee Policies shall include a grievance procedure in order to establish fair and uniform standards for the Enterprise employees that will include procedures for the resolution of disputes between the Enterprise and Enterprise employees. The Enterprise Employee Policies' grievance procedures shall be separate and distinct from any employee licensing appeal proceedings authorized by the Tribal Gaming Ordinance and applicable regulations.

At a minimum, the Enterprise Employee Policies shall provide for an employee grievance process which provides the following: A written "Board of Review" process will be created by the Enterprise's general manager to provide Enterprise employees with a procedure for bringing grievances involving substantial work related issues to the attention of Enterprise management so they may be promptly and permanently resolved in a fair and equitable manner. The Board of Review process will be available to all Enterprise employees except: (i) job applicants, temporary employees, and part-time employees; (ii) employees at the director level and above; and (iii) employees discharged for actions involving violations of tribal law, including tribal gaming regulations, or federal, state, or local law. Enterprise employees will be eligible to use the Board of Review process if they have: (A) completed their orientation employment period as defined in the Enterprise Employee Policies; (B) concluded all required preliminary procedures before seeking a Board of Review hearing; (C) completed a Board of Review hearing request form; and (D) submitted the hearing request form within the allotted time frame to the Enterprise human resources department and a copy to the head of their home department in the Enterprise.

The Enterprise's human resources department shall be responsible for determining the composition of the hearing panel and for establishing hearing rules and procedures, in each case subject to the provisions of the Enterprise Employee Policies. The Board of Review will be empowered to make a range of decisions necessary to fully resolve the grievance, including reinstatement (with or without backpay) or upholding the employee's discharge. The Board of Review's decision on the grievance will be final and binding for the employee and the Enterprise, and there will be no appeal beyond the Board of Review except as may be expressly provided in the Enterprise Employee Policies.

Manager shall be responsible for administering the Enterprise Employee Policies. Any amendments to the Enterprise Employee Policies must be consistent with this subsection and shall not be effective unless they are approved by the Board of Directors. If the



Board of Directors for any reason declines to meet to discuss a proposed amendment, after not less than twenty (20) days written notice of any such amendment, the Board of Directors shall be deemed to have consented to such amendment.

(c) Senior Employees. The selection of the General Manager, Chief Financial Officer, Casino Manager, and Human Resources Manager for the New Facility, or the functionally equivalent positions (each such employee a "Senior Employee" and collectively, the "Senior Employees"), shall be subject to consultation between, and agreement by, Manager and the Board of Directors. All such Senior Employees shall be employees of the Manager, unless otherwise agreed to in writing by the Manager and the Board of Directors. Senior Employees who are employees of the Manager shall be subject to personnel policies of the Enterprise applicable to managers generally and to licensing requirements in accordance with applicable laws and regulations. The Compensation of such Senior Employees shall be deemed to be Operating Expenses and such Compensation shall be based upon the salaries, benefits and bonuses of similarly situated employees in similarly situated gaming enterprises. Manager shall meet with the Board of Directors to discuss Persons that the Manager proposes to select for those positions, and the Board of Directors' approval shall be deemed given unless a specific written objection thereto is delivered to Manager within ten (10) days after Manager and the Board of Directors have met to discuss the proposed selections. If the Board of Directors for any reason declines to meet with Manager to discuss a proposed selection after not less than ten (10) days written notice, the Board of Directors shall be deemed to have consented unless a specific written objection is delivered to Manager within five (5) days after the date of the proposed meeting. In the event that the Board of Directors and the Manager are not able to reach mutual agreement concerning any disputed selection under this subsection within a period of fifteen (15) days after the date the Board of Directors provide written notice of the Band's objection to Manager, either party shall be entitled to submit the dispute to arbitration in accordance with Article 12.

(d) Enterprise Employees. The terms of employment of all Enterprise Employees shall be structured to comply with all Compact requirements.

(e) Removal of Employees. Manager will act in accordance with the Enterprise Employee Policies with respect to the discharge, demotion or discipline of any Enterprise Employee.

(f) Employees of the Band. All Enterprise Employees, other than the Senior Employees, shall be employees of the Band.

3.10 TGA Expenses. The budget for the TGA shall reflect the necessary and reasonable cost of regulating the Enterprise and shall not exceed, for purposes of determining the portion of the TGA budget that is deductible as an Operating Expense, the amount set forth in the Operating Budget and Annual Plan. Disputes between the

parties relating to the TGA budget shall be resolved pursuant to the provisions of Article 12 of this Agreement, with the standard of review being whether any costs of the TGA are, in the decision of the arbitrator or arbitrators, in excess of the necessary and reasonable cost of regulating the Enterprise.

3.11 Employee Background Checks. A background investigation shall be conducted by the TGA in compliance with all Legal Requirements, to the extent applicable, on each applicant for employment as soon as reasonably practicable. No individual whose prior activities, criminal record, if any, or reputation, habits and associations are known to pose a threat to the public interest, the effective regulation of Gaming, or to the gaming licenses of Manager, or to create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of Gaming, shall knowingly be employed by Manager or the Band.

3.12 Band Preference and Member Training. In order to maximize benefits of the Enterprise to the Band, Manager shall, during the term of this Agreement, to the maximum extent reasonably possible under applicable law, including, but not limited to the Indian Civil Rights Act, 25 U.S.C. Section 1301, *et seq.*, give preference in recruiting, training and employment to qualified members of the Band, their spouses, and children in all job categories of the Enterprise, including senior management; and then as provided in the affirmative action policy approved by Manager and the Band, provided, that the terms, including compensation and/or bonuses, of employment of such Persons are consistent with the terms of employment for similarly-situated employees in the same or an analogous market. In entering into contracts for the supply of goods and services for the Enterprise, Manager shall, if all bids and proposals are equal, and to the extent deemed feasible by Manager in its good faith business judgment, award contracts to qualified companies owned and controlled by the Band, or to qualified companies which are both controlled by members of the Band and are majority owned by members of the Band. Manager shall provide training programs for Band members to enable such Band members to work at all levels of the Enterprise. Prior to the Commencement Date, Manager shall prepare and deliver to the Band a proposed Band member training program for approval by the Band. The costs of implementing and providing training to Band members in accordance with any Band member training program shall be Operating Expenses of the Enterprise.

3.13 Final Determination. Final determination of the qualifications for employment of all Persons, including Band members, shall be made by Manager, subject to any licensing requirements of the Tribal Gaming Authority.

3.14 Pre-Opening. At all times from the execution date of this Agreement up until the Commencement Date, the Band agrees that it shall consult with Manager prior to making any material changes to the operation of the Existing Facility, including, without limitation, any material changes to the Gaming operation at the Existing Facility,

in order to ensure that the transition from the Existing Facility to gaming at the New Facility is as seamless as possible. At such time prior to the scheduled Commencement Date as is reasonably necessary, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the New Facility for opening. To implement the pre-opening program, Manager shall prepare a comprehensive pre-opening budget which shall be submitted to the Board of Directors for its approval no later than seven months prior to the scheduled Commencement Date ("Pre-Opening Budget"). The Pre-Opening Budget shall identify expenses which Manager anticipates to be necessary or desirable in order to prepare the New Facility for the Commencement Date, including without limitation, cash for disbursements, hiring, training, relocation and temporary lodging of employees, advertising and promotion, office overhead and office space (whether on or off the Facility Site), and travel and business entertainment (including opening celebrations and ceremonies) ("Pre-Opening Expenses"). The Band recognizes that the Pre-Opening Budget will be prepared well in advance of the Commencement Date and is intended only to be a reasonable estimate, subject to variation due to a number of factors, some of which will be outside of Manager's control (e.g. the time of completion, inflationary factors and varying conditions for the goods and services required). The Band agrees that the Pre-Opening Budget may be modified from time to time, subject to approval of the Board of Directors in accordance with the procedure established by Section 3.18 of this Agreement for adjustments to the Operating Budget and Annual Plan. Costs and expenses identified in the Pre-Opening Budget shall be funded by the Developer and the Senior Financing Lender pursuant to the terms of the Development Agreement.

3.15 Operating Budget and Annual Plan. Manager shall, prior to the scheduled Commencement Date, submit to the General Council for its approval a proposed Operating Budget and Annual Plan for the Fiscal Year commencing on the Commencement Date. Thereafter, Manager shall, not less than thirty (30) days prior to the commencement of each full or partial Fiscal Year, submit to the General Council for its approval a proposed Operating Budget and Annual Plan for the ensuing full or partial Fiscal Year, as the case may be. The Operating Budget and Annual Plan shall include a projected income statement and projection of cash flow for the Enterprise, with the assumptions used therein. The Operating Budget and Annual Plan shall include, without limitation, a business and marketing plan for the Fiscal Year, and the Minimum Balance which must remain in the Enterprise Accounts and the House Bank as of the end of each month during the Fiscal Year to assure sufficient monies for working capital purposes, and detail of other expenditures proposed to be authorized under the Operating Budget and Annual Plan.

The Operating Budget and Annual Plan for the Enterprise will be comprised of the following:

- (a) A statement of the estimated income and expenses for the coming



Fiscal Year, including estimates as to Gross Revenues and Operating Expenses for such Fiscal Year, such operating budget to reflect the estimated results of the operation during each month of the subject Fiscal Year;

(b) Either as part of the statement of the estimated income and expenses referred to subsection 3.15(a), or separately, budgets for:

- (i) repairs and maintenance;
- (ii) Capital Replacements;
- (iii) Furnishings and Equipment;
- (iv) advertising and business promotion programs for the Enterprise;
- (v) the estimated cost of Promotional Allowances;
- (vi) a business and marketing plan for the subject Fiscal Year; and
- (vii) the TGA, reflecting the necessary and reasonable regulatory costs to be paid by the Enterprise as an Operating Expense.

3.16 Approval of Operating Budget and Annual Plan. The General Council's approval of the Operating Budget and Annual Plan shall not be unreasonably withheld or delayed. Manager shall meet with the General Council to discuss the proposed Operating Budget and Annual Plan and the General Council's approval shall be deemed given unless a specific written objection thereto, specifying the disputed budget item or items, is delivered to Manager within thirty (30) days after Manager and the General Council have met to discuss the proposed Operating Budget and Annual Plan. If the General Council for any reason decline to meet with Manager to discuss a proposed Operating Budget and Annual Plan after not less than twenty (20) days written notice, the General Council shall be deemed to have consented unless a specific written objection, specifying the disputed budget item or items, is delivered to Manager within thirty (30) days after the date of the proposed meeting.

3.17 Resolution of Disputed Items in Operating Budget and Annual Plan. If the proposed Operating Budget and Annual Plan contains disputed budget item(s) that Manager and the General Council were unable to resolve, then the disputed items shall be referred to the Board of Directors and the Manager and the Board of Directors agree to cooperate with each other in good faith to resolve the disputed or objectionable proposed item(s). If the Board of Directors and the Manager are unable to resolve the disputed or objectionable item(s) prior to the commencement of the applicable Fiscal Year, the undisputed portions of the proposed Operating Budget and Annual Plan shall be deemed

to be adopted and approved and the corresponding line item(s) contained in the Operating Budget and Annual Plan for the preceding Fiscal Year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed item(s) in the proposed Operating Budget and Annual Plan. Those line items which are in dispute shall be determined by increasing the preceding Fiscal Year's actual expense for the corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (2004 = 100) for the Fiscal Year prior to the Fiscal Year with respect to which the adjustment to the line item(s) is being calculated or any successor or replacement index thereto. The resulting Operating Budget and Annual Plan obtained in accordance with the preceding sentence shall be deemed to be the Operating Budget and Annual Plan in effect until such time as Manager and the Board of Directors have resolved the items objected to by the General Council. Notwithstanding the foregoing, during the initial Fiscal Year of this Agreement, Manager's proposed expenditures for disputed line items shall be deemed to be in effect as part of the Operating Budget and Annual Plan.

3.18 Revisions to Operating Budget and Annual Plan. Manager may, after notice to and approval by the Board of Directors, revise the Operating Budget and Annual Plan from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of expense. Expenditures shall not materially vary from the approved budgets nor exceed the aggregate Operating Budget and Annual Plan (as approved by the General Council, and revised with the reasonable approval of the Board of Directors) absent the written consent of the Board of Directors; provided that the Band recognizes that (a) the absolute amounts of expenditures may exceed budgeted amounts if the volume of business at the New Facility exceeds projections, (b) the relative amounts of income and expense may vary from budgeted amounts if the volume of business is less than projected, and (c) Manager does not guarantee the economic performance shown in budgets. Manager shall submit any necessary revisions of the Operating Budget and Annual Plan to the Board of Directors for review on a quarterly or other appropriate basis.

3.19 Capital Budgets.

(a) Manager shall, not less than thirty (30) days prior to the commencement of each Fiscal Year, or partial Fiscal Year, submit to the Board of Directors a recommended capital budget (the "Capital Budget") describing proposed capital expenditures for the ensuing full or partial year, as the case may be, for the physical plant, furnishings, equipment, and ordinary capital replacement items, all of which are defined to be any items, the cost of which is capitalized and depreciated, rather than expended, using GAAP ("Capital Replacements") as shall be required to operate the Enterprise in accordance with sound business practices.

(b) Capital Replacements in the Capital Budget in an aggregate sum equal to or less than the sum of the Capital Replacement Reserve for the Fiscal Year shall be approved by the Board of Directors. In such a case, the Board of Directors and Manager shall meet to discuss the proposed Capital Budget and the Board of Directors shall be required to make specific written objections to a proposed Capital Budget in the same manner and within the same time periods specified in Section 3.16 with respect to approval of the Operating Budget and Annual Plan. The Board of Directors shall not unreasonably withhold or delay consent to the Capital Budget.

(c) Capital Replacements in the Capital Budget in an aggregate sum greater than the sum of the Capital Replacement Reserve for the Fiscal Year shall be subject to approval of the General Council in its sole discretion. In the event that the Capital Replacements in the Capital Budget exceed the Capital Replacement Reserve, the General Council and Board of Directors and Manager shall meet to discuss the proposed Capital Budget and the General Council and Board of Directors shall be required to make specific written objections to a proposed Capital Budget in the same manner and within the same time periods specified in Section 3.16 with respect to approval of the Operating Budget and Annual Plan.

(d) Manager shall be responsible for the design and installation of Capital Replacements subject to the Board of Directors' approval. Notwithstanding the foregoing, the Manager shall have the authority to reallocate capital expenditures within the categories included in the Capital Budget to deal with changed conditions over the course of the relevant year without the approval of the Board of Directors, provided that the Manager shall not reallocate more than fifteen percent (15%) of the total amount of the Capital Budget during the course of the year and any such reallocation shall not increase the total amount of the Capital Budget.

3.20 Capital Replacements. The Band shall effect and expend such amounts for any Capital Replacements as shall be required, in the course of the operation of the Enterprise, to maintain, at a minimum, the Enterprise in compliance with any Legal Requirements and to comply with Manager's recommended programs for renovation, modernization and improvement intended to keep the Enterprise competitive in its market; or to correct any condition of an emergency nature, including without limitation, maintenance, replacements or repairs which are required to be effected by the TGA, which in Manager's sole discretion requires immediate action to preserve and protect the New Facility, assure its continued operation, and/or protect the comfort, health, safety and/or welfare of the New Facility's guests or employees (an "Emergency Condition"); provided, however, that the Band shall be under no obligation to fund Capital Replacements in aggregate amount greater than its periodic required contributions to the Capital Replacement Reserve described in Section 3.21. Manager is authorized to take all steps and to make all expenditures from the Disbursement Accounts described in Section 4.1(e) (in the case of non-capitalized repairs and maintenance), or Capital

Replacement Reserve described at Section 3.21 (in the case of expenditures for Capital Replacements), as it deems necessary to repair and correct any Emergency Condition, regardless of whether such provisions have been made in the Capital Budget or the Operating Budget and Annual Plan for any such expenditures; or the cost thereof may be advanced by Manager and reimbursed from future revenues. Design and installation of Capital Replacements shall be effected in a time period and subject to such conditions as the Board of Directors may establish to minimize interference with or disruption of ongoing operations.

3.21 Capital Replacement Reserve. Manager shall establish a Capital Replacement Reserve on the books of account of the Enterprise, and the periodic contributions of cash required by Section 3.22 shall be deposited by the Enterprise into an account (the "Capital Replacement Reserve") established in the Enterprise's name at a bank designated by the Board of Directors in accordance with Section 4.1(a) of this Agreement. All amounts in the Capital Replacement Reserve shall be invested in interest bearing investments in accordance with the Enterprise Investment Policy to the extent that availability of funds, when required, is not thereby impaired. Interest earned on amounts deposited in the Capital Replacement Reserve shall be credited to the Capital Replacement Reserve and shall be available for payment of expenditures for Capital Replacements to the New Facility. Manager shall draw on the Capital Replacement Reserve for Capital Replacements to purchase those items included in the Capital Budget approved by the Board of Directors or such emergency additions, repairs or replacements as shall be required to correct an Emergency Condition.

3.22 Periodic Contributions to Capital Replacement Reserve. In accordance with subsection 5.7(f) of this Agreement, Manager shall make monthly deposits into the Capital Replacement Reserve in amounts equivalent to an annual rate of

such reserve shall be funded out of Monthly Distribution Payments. The cash amounts required to be so deposited shall be calculated and deposited into the Capital Replacement Reserve, in arrears, no later than the twenty-first (21st) day of the month immediately following the month with respect to which a deposit is made. If any adjustment of Gross Revenues is made as a result of an audit or for other accounting reasons, a corresponding adjustment in the Capital Replacement Reserve deposit shall be made. In addition, all proceeds from the sale of capital items no longer needed for the operation of the Enterprise, and the proceeds of any insurance received in reimbursement for any items previously paid from the Capital Replacement Reserve, shall be deposited into the Capital Replacement Reserve upon receipt.

3.23 Use and Allocation of Capital Replacement Reserve. Any expenditures for



Capital Replacements which have been budgeted and previously approved may be paid from the Capital Replacement Reserve without further approval from the Board of Directors. Any amounts remaining in the Capital Replacement Reserve at the close of any year shall be carried forward and retained in the Capital Replacement Reserve until fully used. If the amounts in the Capital Replacement Reserve at the end of any year plus the anticipated contributions to the Capital Replacement Reserve for the next ensuing year are not sufficient to pay for Capital Replacements authorized by the Capital Budget for such ensuing year, then additional funds, in the amount of the projected deficiency, may be advanced by the Manager and reimbursed by the Enterprise from future revenues.

3.24 Internal Control Systems. Manager shall implement systems for monitoring of all funds (the "Internal Control Systems"), which systems shall comply with all Legal Requirements, including any tribal internal control standards adopted by the Band provided that any such tribal internal control standards are not in conflict with any minimum internal control standards promulgated by the NIGC or required by the Compact, and shall be submitted to the Board of Directors and the Tribal Gaming Authority for approval in advance of implementation, which approval shall not be unreasonably withheld, delayed or conditioned. The TGA shall retain the right to review all Internal Control Systems and any changes instituted to the Internal Control Systems of the Enterprise consistent with Legal Requirements and any tribal internal control standards adopted by the Band provided that any such tribal internal control standards are not in conflict with any minimum internal control standards promulgated by the NIGC or required by the Compact. The Board of Directors also shall have the right to retain an auditor to review the adequacy of the Internal Control Systems prior to the Commencement Date. The cost of such review shall be a Pre-Opening Expense. Any significant changes in such systems after the Commencement Date also shall be subject to review and approval by the Tribal Gaming Authority. The Manager shall have the right and duty to maintain the Internal Control Systems and the TGA shall have the right and responsibility to maintain and enforce compliance with the Internal Control Systems in order to prevent any loss of proceeds from the Enterprise. The Tribal Gaming Authority shall have the right to inspect and oversee the Internal Control System at all times. Manager shall install a closed circuit television system to be used for monitoring the cash handling activities of the Enterprise sufficient to meet all Legal Requirements, including, without limitation, requirements of any tribal internal control standard provided that any such tribal internal control standards are not in conflict with the Compact.

3.25 Relationships with Third Parties. Manager shall supervise and oversee the relationships between third parties dealing with the Enterprise; provided, however, that the Band, in consultation with Manager, shall supervise and oversee all relationships and negotiations with local, state or federal Governmental Entities, and the Band shall retain all legal authority to negotiate such Governmental Approvals, and retains the legal authority to approve, disapprove or enter into binding and enforceable agreements with

any local, state or federal Governmental Entities. Notwithstanding the foregoing, the Band shall not enter into any agreement pursuant to this Section 3.25 for an amount that exceeds the amount set forth for such work, approval and/or service in the Operating Budget and Annual Plan.

3.26 Advertising and Marketing. Manager shall, after consultation with the Board of Directors, select and place all advertisement, marketing and business promotion programs for the Enterprise, consistent with the Operating Budget and Annual Plan.

#### ARTICLE 4. BANKING AND BANK ACCOUNTS.

##### 4.1 Banking and Bank Accounts.

(a) Enterprise Accounts. The Board of Directors shall select, and Manager shall approve, a bank or banks for the deposit and maintenance of funds and Manager shall establish in the name of the Enterprise such bank accounts as Manager deems appropriate and necessary in the course of business and as consistent with this Agreement, including the New Cash Collateral Account and the Disbursement Accounts (the "Enterprise Accounts"). The Manager and its designees shall control the Enterprise Accounts such that only the Manager or its designees may deposit and draw funds from the Enterprise Accounts. Establishment of any Enterprise Account shall be subject to the approval of the Board of Directors. The sum of money to be maintained in the Enterprise Account(s) to serve as working capital for Enterprise operations shall include all sums needed for the House Bank, and all sums needed to accrue for payment of expenses not paid on a monthly basis (the "Minimum Balance"). Manager shall propose a policy for investing funds in excess of the Minimum Balance (the "Enterprise Investment Policy"), which shall be subject to the approval of the Board of Directors.

(b) Daily Deposits to New Cash Collateral Account. Manager shall establish for the benefit of the Band in the Enterprise's name the New Cash Collateral Account, which shall be subject to the lien and security interest of Developer and Manager to the extent provided in the Developer Account Control Agreements and the Manager Account Control Agreements. Manager shall collect all Gross Revenues and other proceeds connected with or arising from the operation of the Enterprise, including but not limited to all hotel, entertainment, food and beverage and retail sales, and deposit the related cash daily into the New Cash Collateral Account at least once during each 24-hour period unless otherwise agreed by the Board of Directors. All money received by the Enterprise on each day that it is open must be counted at the close of operations for that day or at least once during each 24-hour period. Manager agrees to obtain a bonded transportation service to effect the safe transportation of the daily receipts to the bank, which expense shall constitute an Operating Expense.

(c) Disbursement Accounts. Manager shall establish for the benefit of the Band in the Enterprise's name one or more Disbursement Accounts. Manager shall,

consistent with and pursuant to the approved annual Operating Budget and Annual Plan and Capital Budget, have responsibility and authority for making all payments for Operating Expenses, debt service, Management Fees, and Tribal Distributions from the Disbursement Accounts.

(d) No Cash Disbursements. Manager shall not make any cash disbursements from the Enterprise Accounts except for the payment of cash prizes from the House Bank; and except for such cash disbursements from the House Bank, any and all payments or disbursements by the Manager shall be made by check or wire transfer drawn against an Enterprise Account.

(e) Transfers Between Accounts. Manager has the authority to transfer funds from and between the Enterprise Accounts to the Disbursement Accounts in order to pay Operating Expenses and to pay debt service pursuant to the Loans, to invest funds in accordance with the Enterprise Investment Policy, and to pay the Management Fees and Tribal Distributions pursuant to this Agreement, and to make other payments required by Article 5 below.

(f) Transfers from New Cash Collateral Account to Disbursement Accounts. Manager agrees that, notwithstanding any provision of the Manager Security Agreement or the Manager Account Control Agreements or any Band Event of Default or any default by the Band under the Manager Security Agreement or the Manager Account Control Agreements, it shall make or permit timely transfers from the New Cash Collateral Account to Disbursement Accounts of all funds needed to pay (a) Operating Expenses; (b) all Loans; (c) the Minimum Guaranteed Monthly Payment; and (d) maintenance of the Minimum Balance, and any other reserves approved by the Board of Directors with the written consent of Manager. Manager further agrees that, prior to any Band Event of Default, it shall make timely transfers to Disbursement Accounts to enable the Monthly Distribution Payment to be made to the Band when due, and otherwise in accordance with this Agreement. Manager, on behalf of the Band, shall arrange for, obtain and maintain, or cause its agents to maintain, with responsible insurance carriers licensed to do business in the State, insurance satisfactory to Manager and the Board of Directors covering the New Facility and the operations of the Enterprise, naming the Band, the Enterprise and Manager as insured parties. Manager shall recommend to the Board of Directors the minimum amounts of insurance coverage for the Enterprise, which shall be subject to the reasonable approval of the Band and which shall be no less than that required by the Compact.

(g) Senior Lien of Senior Financing Loan Agreement. Upon execution of the Senior Financing Loan Agreement, in recognition of the expected senior lien of the Senior Financing Lender, Manager and the Band agree that the foregoing provisions of this Section 4.1 regarding establishment of deposits into and transfers between Enterprise Accounts (including the New Cash Collateral Account) shall be subject to any contrary

provisions in the Senior Financing Loan Agreement.

4.2 Accounting and Books of Account.

(a) Statements. Manager shall prepare and provide to the Board of Directors operating statements on behalf of the Enterprise. Such statements shall be prepared and provided on a monthly and annual basis, with monthly statements to include year-to-date statements. The operating statements shall comply with all Legal Requirements and shall include an income statement, statement of cash flows, and balance sheet for the Enterprise. Such statements shall include the Operating Budget and Capital Budget projections as comparative statements, and, after the first full year of operation, will include comparative statements from the comparable period for the prior year; and shall reflect in accordance with GAAP all amounts collected and received and all expenses, deductions and disbursements made therefrom in connection with the Enterprise.

(b) Books of Account. Manager shall maintain full and accurate books of account on behalf of the Enterprise at an office in the New Facility and at any other location as may be determined by Manager and approved by the Board of Directors. The TGA and other designated representatives of the Board of Directors shall have immediate access to the daily operations of the Enterprise and shall have the unlimited right to inspect, examine, and copy all such books and supporting business records. Such rights shall be exercised through the Tribal Gaming Authority.

(c) Accounting Standards. Manager shall maintain the books and records on behalf of the Enterprise reflecting the operations of the Enterprise in accordance with GAAP and shall adopt and follow the fiscal accounting periods utilized by the Enterprise in its normal course of business (i.e., a month, quarter and year prepared in accordance with the Fiscal Year). The accounting systems and procedures shall comply with Legal Requirements and, at a minimum:

- (i) include an adequate system of internal accounting controls;
- (ii) permit the preparation of financial statements in accordance with GAAP;
- (iii) be susceptible to audit in accordance with GAAP and all requirements of IGRA, the NIGC and the Compact;
- (iv) permit the calculation and payment of the Management Fee described in Article 5 below and the calculation by the Band and the NIGC of annual fees payable under 25 C.F.R. Section 514.1;
- (v) provide for the allocation of operating expenses or overhead



expenses among the Band, the Enterprise, and any other user of shared facilities and services; and

(vi) all monthly internal and annual audited financial statements shall show separately the Net Revenue (Gaming) and related Operating Expenses and the Net Revenue (Other) and related Operating Expenses, as well as Net Revenue and Operating Expenses for the entire Enterprise.

4.3 Annual Audit. The TGA shall select an independent certified public accounting firm which is a "Big Four" accounting firm or an accounting firm with not less than five (5) years auditing experience with Gaming enterprise operations, which firm shall perform an annual audit of the books and records of the Enterprise and of all contracts for supplies, services or concessions reflecting Operating Expenses, and shall provide such other services as the Board of Directors shall designate. To the extent permitted by Legal Requirements, the BIA, the NIGC and the State Gaming Agency shall also have the right to perform audits of the Enterprise on any aspect of the Enterprise at any time without restriction. The costs incurred for such audits shall constitute an Operating Expense. Such audits shall be provided by the Band to all applicable federal and state agencies, as required by law, and may be used by Manager for reporting purposes under federal and state securities laws, if required. All audited financial statements shall conform to all requirements of IGRA and the NIGC and, to the extent required by Legal Requirements, shall segregate gaming revenue and expenses from non-gaming revenue and expenses.

4.4 Litigation. Except for disputes between the Band and Manager, and claims relating to the Band's status as a Band or the trust status of the Facility Site, Manager shall bring and/or defend and/or settle any claim or legal action brought against Manager, the Enterprise or the Band, individually, jointly or severally, or any Enterprise Employee, in connection with the operation of the Enterprise if the basis of such claim or legal action was within the scope of Manager's authority under this Agreement, and Manager shall furnish such information regarding claims, litigation and arbitration as the Band may request. Manager shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to assert or defend any such claim or cause of action. All liabilities, costs and expenses, including reasonable attorneys' fees and disbursements incurred in defending and/or settling any such claim or legal action which are not covered by insurance and which, as to Manager, relate to acts or omissions of Manager within the scope of its authority under this Agreement, shall be an Operating Expense, or, if incurred prior to the Commencement Date, shall be a Pre-Opening Expense, except that Manager shall be solely responsible for all losses, claims, damages or judgments, including reasonable attorneys' fees arising from or related to Manager's gross negligence, willful misconduct, fraud or bad faith. Nothing contained herein is a grant to Manager of the right to waive the Band's or the Enterprise's sovereign immunity. That right is strictly reserved to the Band, and shall at

the option of the Board of Directors be asserted by the Band through its counsel. Any settlement of a third party claim or cause of action shall, as to any payment in excess of [ ] not covered by insurance, be approved by the Board of Directors (which consent shall not be unreasonably withheld). 64

ARTICLE 5. MANAGEMENT FEE, DISBURSEMENTS, AND OTHER PAYMENTS BY MANAGER

5.1 Management Fee. Subject to the provisions of Sections 5.7 and 5.11, Manager is authorized by the Band to pay itself from the Enterprise Account(s) a Management Fee equal to [ ] plus the Inclusion Amount in each month or portion thereof from the Commencement Date until the end of the Term; provided, however, the amount of the Management Fee shall be adjusted as follows. 64

5.2 Payment of Management Fee. The Management Fee shall be payable monthly in arrears on or before the twenty-first (21<sup>st</sup>) day of the following month and shall be subordinated to the Minimum Guaranteed Monthly Payment.

5.3 Disbursements. As and when received by the Enterprise, Gross Revenues shall be deposited in the Cash Collateral Account created pursuant to subsection 4.1(b) of this Agreement. There shall, in turn, be disbursed by Manager, on a monthly basis, for and on behalf of the Band, funds from the Enterprise Account(s) in accordance with Section 4.1(e) of this Agreement to pay, to the extent available, Operating Expenses and, subject to the terms of Section 5.7, required deposits into the Capital Replacement Reserve for Capital Replacements. Manager will reserve funds in the Enterprise in amounts equal to the Minimum Balance.


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5.6 Adjustment to Bank Account. After the disbursements pursuant to Section

5.3 and establishment of any additional reserves for future disbursements as Manager deems necessary and as are approved by the Board of Directors, taking into account anticipated cash flow and Operating Costs of the Enterprise, any excess funds remaining in the Enterprise Account(s) over the Minimum Balance, the Capital Replacement Reserve, and such additional reserves as may be approved by the Board of Directors shall be disbursed monthly in accordance with Section 5.7.

5.7 Payment of Fees and Band Disbursement. Within twenty one (21) days after the end of each calendar month of operations, Manager shall calculate Gross Revenues, Operating Expenses, and Net Revenues of the Enterprise for the previous month's operations and the Fiscal Year's operations to date. To the extent not contrary to any requirements of the Senior Financing Loan Agreement (which shall not alter or modify the first priority status of the Minimum Guaranteed Monthly Payment as set forth in this Section 5.7), Net Revenues shall be disbursed from the Enterprise Account(s) to the extent available in the following order of priority:

- (a) the Minimum Guaranteed Monthly Payment described in Section 5.8;
- (b) Current principal and any other payments due on all Loans (and if payments are due quarterly, a reserve equal to one third of the scheduled quarterly payment shall be deposited in a designated Enterprise Account for such payment, and may be invested in accordance with the Enterprise Investment Policies pending payment);
- (c) Any amount payable to Developer pursuant to the Land Agreement, subject, however, to the provisions set forth below;
- (d) Principal due on the Minimum Payments Note (subject to the provisions of Section 5.9)
- (e)  b4
- (f) the Management Fee;
- (g) Capital Replacement Reserve contributions as described in Section 3.21.

All remaining Net Revenues (the "Monthly Distribution Payment") shall be distributed to the Band at the same time the Management Fee is paid. Notwithstanding the foregoing, any amount payable to Developer pursuant to the Land Agreement shall not be paid out of Net Revenues disbursed from the Enterprise Account(s) in accordance with Subsection

5.7(c), unless the Band fails to pay when due any payment due pursuant to the terms of the Land Agreement and such payment default has continued for ten (10) days after Developer gives the Band notice thereof. In the event such a payment default occurs, for a term of one (1) year from the date of any such payment default (any such one year period a "Default Period"), any amount due or payable to Developer pursuant to the terms of the Land Agreement shall be paid from Net Revenues disbursed from the Enterprise Account(s) to the extent available, as provided in Section 5.7 and Subsection 5.7(c). Prior to any payment default by the Band pursuant to the terms of the Land Agreement, and after the expiration of any Default Period, the Band shall pay Developer any amount payable to Developer pursuant to the Land Agreement directly from its own funds and such payments shall not be disbursed from the Enterprise Accounts.

5.8 Minimum Guaranteed Monthly Payment. The Enterprise shall, subject to the provisions of Section 5.9, pay the Band          per month (the "Minimum Guaranteed Monthly Payment"), beginning on the Commencement Date and continuing for the remainder of the Term. The Minimum Guaranteed Monthly Payment shall be payable to the Band in arrears on the twenty first (21st) day of each calendar month following the month in which the Commencement Date occurs, which payment shall have priority over the Management Fee. If the Commencement Date is a date other than the first day of a calendar month, the first payment will be prorated from the Commencement Date to the end of the month. Minimum Guaranteed Monthly Payments shall also be prorated if gaming is conducted at the New Facility for any other partial months. The obligation to pay the Band the Minimum Guaranteed Monthly Payment shall not be affected by the actual level of funds generated by the Enterprise. b4

5.9 Minimum Guaranteed Payment Advances. Minimum Guaranteed Monthly Payments shall be deducted from any Monthly Distribution Payments to be received by the Band under Section 5.7 above in any given month;         

Minimum Guaranteed Monthly Payments shall have priority over retirement of development and construction costs.          b4

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5.10 Termination of Payments. The obligation to make Minimum Guaranteed Monthly Payments shall cease upon termination of this Agreement.

5.11 Payment of Net Revenues of the Enterprise. The Net Revenues of the Enterprise paid to the Band pursuant to this Article 5 shall be payable to the Band's bank account specified by the Board of Directors in a notice to Manager pursuant to Section 17.2.

5.12 Maximum Dollar Amount for Recoupment. The maximum dollar amount for recoupment of the development and construction costs of the New Facility and the Enterprise shall be the maximum aggregate amount outstanding under the Existing Bank Loan, the Development Loan and the Senior Financing Loan, provided that such aggregate amount shall not exceed [ ] or such other amount as the Development Board and the Manager may agree; in each case such amounts shall be increased to the extent such increases are caused by Force Majeure or by acts or omissions by the Band, and the parties agree to amend this Agreement to reflect all such increases. Such development and construction costs do not include any advances under the Minimum Payments Note, or the Manager Working Capital Advance Note. 64

#### ARTICLE 6. ENTERPRISE NAME; MARKS

6.1 Enterprise Name. The Enterprise shall be operated under a name (the "Enterprise Name") approved by the General Council after consultation with the Manager and Board of Directors, but the final decision on the Enterprise Name shall be in the Band's sole discretion.

6.2 Marks. All Marks shall be subject to the reasonable approval of the Board of Directors. Prior to the Commencement Date and from time to time during the Term hereof, Manager agrees to take such actions on behalf of the Band as are reasonably necessary to register and protect all Marks. All fees and expenses related to the registration and protection of the Marks shall be Operating Expenses. All Marks not licensed from third parties shall be owned by the Band.

6.3 Signage. Manager shall erect and install in accordance with local codes and regulations appropriate signs in, on or about the New Facility, including, but not limited to, signs bearing Marks as part of the Enterprise Name. The costs of purchasing, leasing, transporting, constructing and installing the required signs and systems prior to the Commencement Date shall be financed by Developer pursuant to the Development Agreement and after the Commencement Date such costs shall be Capital Expenditures of the Enterprise, financed by the Enterprise after the Commencement Date. The costs of



maintaining the required signs and systems and of registering and protecting all Marks shall be Operating Expenses.

6.4 License. The Enterprise Name and Marks used by or in connection with the New Facility may be licensed by the Enterprise from a third party. Any related licensing fees and expenses shall constitute Operating Expenses of the Enterprise.

#### ARTICLE 7. TAXES

7.1 State and Local Taxes. If the State or any local government attempts to impose any tax including any possessory interest tax upon any party to this Agreement or upon the Enterprise, the New Facility or the Facility Site, the Band may direct the Enterprise, in the name of the appropriate party or parties in interest, to resist such attempt through legal action. The costs of such action and the compensation of legal counsel shall be an Operating Expense of the Enterprise. Any such tax shall constitute an Operating Expense of the Enterprise. This section shall in no manner be construed to imply that any party to this Agreement or the Enterprise is liable for any such tax.

7.2 Band Taxes. The Band agrees that neither it nor any agent, agency, affiliate or representative of the Band will impose any taxes, fees, assessments or other charges of any nature whatsoever on payments of any debt service or fees on any Loan or on debt service on or fees paid in connection with any other financing for the New Facility or for the Enterprise, or on the revenues of the Enterprise or the New Facility, or on Manager or the Management Fee as described in Section 5.1 of this Agreement or on any other amounts payable by the Band or the Enterprise to the Manager hereunder. The Band shall, however, be specifically permitted to impose sales, use, excise, hotel occupancy and other similar taxes (excluding taxes, charges, assessments or fees against real or personal property of the New Facility or on gaming revenues or earnings) of such types and percentage amounts not to exceed those imposed by the State or by San Diego County, to the extent that such State or local taxes are preempted and inapplicable at the New Facility.

7.3 Compliance with Internal Revenue Code. Manager shall comply with all applicable provisions of the Internal Revenue Code, including but not limited to, the prompt filing of any cash transaction reports, W-2G reports, and any other reports, forms or filings that may be required by the Internal Revenue Service of the United States or under the Compact.

#### ARTICLE 8. EXCLUSIVITY: NON-COMPETITION

##### 8.1 Exclusivity.

(a) From the date of execution of this Agreement through the Term of this Agreement, the Band shall deal exclusively with Manager for management of

Gaming of the Enterprise at the Facility Site and on all other lands of the Band, and shall deal exclusively with Manager after the Commencement Date for the conduct of all other activities of the Enterprise at the Facility Site, through the Term of this Agreement.

(b) Neither the Manager nor any Affiliate of the Manager shall manage or operate any Gaming operation located in the State of California within a radius of 5 miles of the Facility Site during the Term apart from the Enterprise on the Facility Site. 64

## 8.2 Permitted Assignment.

(a) Manager may assign its rights and obligations under this Agreement and the Transaction Documents to an entity controlled by Manager or by Foxwoods Development Company, LLC (but may not assign its rights to Developer or any entity controlled by Developer), provided that each primary management official and key employee (as defined in 25 C.F.R., Part 502) of such entity and each Person with a financial interest in, or having management responsibility for, such entity (as provided in 25 C.F.R., Part 537) are not deemed unsuitable by the NIGC or the TGA or the State Gaming Agency; and, subject to receipt of NIGC and other necessary regulatory approvals and the Band's consent, to other Persons; in each case subject to assumption by the assignee of all such rights and obligations. No such assignment shall be effective until all necessary governmental approvals have been obtained.

(b) The Band may not assign its rights under this Agreement; except that the Band may, without the consent of Manager, but subject to approval by the Secretary of the Interior or the Chairman of the NIGC or his authorized representative, if required, assign this Agreement and the assets of the Enterprise to an instrumentality of the Band organized to conduct the business of the Project and the Enterprise for the Band that assumes all obligations herein. No assignment authorized hereunder shall be effective until all necessary governmental approvals have been obtained. No such assignment shall relieve the Band of any obligation hereunder, unless otherwise agreed by Manager or the holder of such obligation.

## ARTICLE 9. REPRESENTATIONS, WARRANTIES, AND COVENANTS

9.1 Representations and Warranties of the Band. The Band represents and warrants to Manager as follows:

(a) Due Authorization. The Band's execution, delivery and performance of this Agreement and all other instruments and agreements executed in connection with this Agreement have been properly authorized by the Band and do not require further Band approval and do not conflict with any other agreement or instruments entered into by the Band.

(b) Valid and Binding. This Agreement and all other instruments and agreements executed in connection with this Agreement have been properly executed, and once approved in accordance with Legal Requirements constitutes the Band's legal, valid and binding obligations, enforceable against the Band in accordance with their terms.

(c) Pending Litigation. There are no actions, suits or proceedings, pending or threatened, against or affecting the Band before any court or Governmental Authority, except as disclosed on Exhibit F.

9.2 Band Covenants. The Band covenants and agrees as follows:

(a) Indebtedness. The Band agrees not to create, incur, assume or become or remain liable in respect of any Indebtedness secured by the assets or revenues of the Facility Site or of the New Facility, absent consent of the Manager, individually or in the aggregate, except the Development Loan, the Manager Working Capital Advance Note, the Minimum Payments Note, the Senior Financing Loan, the Credit Agreement, and any other Indebtedness to the Manager and/or the Developer and existing Indebtedness of the Band referred to in Exhibit G attached hereto, in not more than the respective unpaid principal amounts thereof specified in such Exhibit (but not any refinancing or restructuring of such Indebtedness).

(b) Gaming Ordinance. The Gaming Ordinance shall meet the requirements of IGRA and the applicable regulations under IGRA as to all Gaming at the New Facility, shall at all times be consistent with the provisions of this Agreement, and shall not adversely affect the rights of Manager hereunder. Prior to proposing any amendment to the Gaming Ordinance, the TGA agrees to consult with Manager concerning any such amendments and any regulations adopted thereunder that may be appropriate in light of the Project, but the final decision on those matters is in the Band's sole discretion.

(c) No Impairment of Contract. During the term of this Agreement, neither the Band, acting through the General Council, the Board of Directors, or any other entity or instrumentality of the Band, shall enact any law or take any other Band Governmental Action impairing the obligations or contracts entered into in furtherance of the development, construction, operation and promotion of Gaming and related business activities on the Facility Site. Neither the General Council, the Board of Directors, nor any committee, agency, board of any other official body, and no officer or official of the Band shall, by exercise of the police power or otherwise, act to modify, amend, or in any manner impair the obligations of contracts entered into by the Band, the Board of Directors or the TGA or other parties in furtherance of the financing, development, construction, operation, or promotion of Gaming at the Facility Site and other activities of the Enterprise without the written consent of the non-tribal parties to such contracts.

Notwithstanding the foregoing, enactment and enforcement of laws by the Band relating to Gaming which are expressly and specifically required by subsequent changes in state law which are applicable to Gaming at the New Facility Site pursuant to the Compact or by subsequent changes in federal law shall not be construed to be impairment of contract.

(d) Waiver of Sovereign Immunity. The Band will waive sovereign immunity on the limited basis described in Article 12 with respect to this Agreement.

(e) Valid and Binding. This Agreement, the Manager Working Capital Advance Note, the Minimum Payments Note, and each other contract contemplated by this Agreement shall, once approved in accordance with Legal Requirements, be enforceable in accordance with their terms.

(f) Legal Compliance. In its performance of this Agreement and all other Transaction Documents, the Band shall comply with all Legal Requirements.

(g) No Impairment. Without the consent of the Manager, the Band will not, by amendment of its Articles of Association or any other organizational document or through any reorganization, transfer of assets, dissolution or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Band, but will at all times in good faith assist in the carrying out of all the provisions of this Agreement and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Manager against impairment.

(h) Title to Assets. During the Term of this Agreement the Band shall retain its interest in the title to (or the leasehold interest in) all Enterprise assets, including the Gross Revenues, the Facility Site and any fixtures, supplies and equipment, subject to the management thereof in accordance with the terms hereof, the Developer's and Manager's security interests in the Cash Collateral Accounts and in the Furnishings and Equipment and any other liens granted in accordance with the Development Agreement.

(i) Encumbrances. The Band shall not act in any way whatsoever, either directly or indirectly, to cause and shall not allow any Person to become an encumbrancer or lienholder of the Facility Site or the New Facility or the assets or revenues of the New Facility except as provided under the Credit Agreement, this Agreement or the Development Agreement; provided however, the Band may grant subordinated liens and security interests pertaining to the Enterprise and the New Facility provided such liens are subject to the prior written consent of Manager and to subordination agreements acceptable to Manager, in its sole discretion.

(j) Prohibition of Financial Interest in Enterprise. No Member of the Band Government or Relative of a Member of the Band Government shall have a direct or indirect financial interest in the Enterprise greater than the interest of any other

member of the Band, except as permitted pursuant to the Tribal Revenue Allocation Plan of the Band.

(k) Termination of Gaming at the Existing Facility. Upon the Commencement Date, the Band shall terminate the conduct of Gaming at the Existing Facility.

(l) Specific Performance Restriction. Any breach of this Section 9.2 shall not be a basis to overturn, negate or in any manner modify any Band Governmental Action through arbitration, and any remedy for such breach shall be subject to the Specific Performance Restriction. The preceding sentence does not prevent an arbitrator from determining that the taking of any Band Governmental Action or the failure to take any Band Governmental Action, which is not caused by a breach of Manager's obligations under this Agreement, constitutes a breach of this Agreement by the Band, thereby resulting in liability on the part of the Band for damages in favor of the Manager as provided in this Agreement.

(m) Opinion of Counsel. The Band shall provide Manager upon execution of this Agreement with an opinion of its counsel, in form satisfactory to Manager, regarding due authorization, execution, and enforceability upon NIGC Approval, of this Agreement and the Transaction Documents.

(n) Master Lease. The Band agrees that it shall consult with Manager regarding drafting and execution of a federally approved master lease agreement between the Band and the Enterprise pursuant to which Manager, on behalf of the Enterprise, will be able enter into sub-leases with third parties (without necessity of further federal approval) in accordance with an approved Operating Budget and Annual Plan.

(o) NIGC Approval. The Band shall use its best efforts to assist the Manager in obtaining NIGC Approval.

9.3 Representations and Warranties of Manager. Manager represents and warrants to the Band as follows:

(a) Due Authorization. Manager's execution, delivery and performance of this Agreement, and all other instruments and agreements executed in connection with this Agreement have been properly authorized by the Manager and do not require further approval.

(b) Valid and Binding. This Agreement and all other instruments and agreements executed in connection with this Agreement have been properly executed and constitutes Manager's legal, valid and binding obligation, enforceable against Manager in accordance with their terms.



(c) Litigation. There are no actions, suits or proceedings pending or threatened against or affecting Manager before any court or Governmental Authority that would in any material way affect Manager's ability to perform this Agreement, other than litigation disclosed in the attached Exhibit H. Manager warrants that no litigation so disclosed in any material way affects or will affect Manager's ability to perform under this Agreement.

9.4 Manager Covenants. Manager covenants and agrees as follows:

(a) Noninterference in Band Affairs. Manager agrees not to interfere in or attempt to wrongfully influence the internal affairs or government decisions of the Band government, by offering cash incentives, by making written or oral threats to the personal or financial status of any Person, or by any other action. Actions by Manager, including employment and third party contracting actions, in the normal course of business shall not be deemed to be interference with or an attempt to wrongfully influence the internal affairs or government decisions of the Band government.

(b) Prohibition of Payments to Members of Band Government. Manager represents and warrants that no payments have been or will be made by Manager, or any Affiliate or Insider of Manager, to any present or former member of the General Council or Member of the Band Government, any Band official, any Relative of a Member of Band Government or Band official, any Band Government or TGA employee, any agent of the Band, or any entity known by Manager to be associated with any such Person, for the purpose of obtaining any special privilege, gain, advantage or consideration for Manager.

(c) Manager shall, not less than six (6) months prior to the Commencement Date, ensure that Foxwoods Management Pauma, LLC is initially capitalized with not less than [ ] in current assets not otherwise obligated or encumbered. Additionally, FDC shall, as of the execution date of this Agreement ensure that it is capitalized with, and at all times during the Term of this Agreement, maintains capitalization of not less than [ ] (the "Guaranty Amount") in current assets not otherwise obligated or encumbered, provided however, that the Guaranty Amount shall include [ ]

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(d) On January 1, April 1, July 1 and October 1 of each year during the term hereof, FDC shall provide to the Band an Officer's Certificate signed by a duly authorized officer of FDC, certifying that FDC is in compliance with the terms of Section 9.4(c) hereof. The Officer's Certificate is in the form attached hereto as Exhibit L.

9.5 No Amendment. Manager shall not act in any way whatsoever, directly or indirectly, to cause this Agreement to be amended, modified, canceled, or terminated, except pursuant to its express terms or with the consent of the Band.

9.6 No Liens. Subject to the exceptions stated in this Section 9.6, the Band specifically warrants and represents to Manager that during the term of this Agreement the Band shall not act in any way whatsoever, either directly or indirectly, to cause and in any event shall not allow any Person to become an encumbrancer or lienholder of the Facility Site or the New Facility except as provided under the Credit Agreement, this Agreement or the Development Agreement. Except as otherwise specifically provided in this Agreement, Manager specifically warrants and represents to the Band that during the term of this Agreement, Manager shall not act in any way, directly or indirectly, to cause any Person to become an encumbrancer or lienholder of the Facility Site or the New Facility, or to obtain any interest in this Agreement without the prior written consent of the Band, and, where applicable, the United States. The Band and Manager shall keep the New Facility and Facility Site free and clear of all enforceable mechanics' and other enforceable liens resulting from the construction of the New Facility and all other enforceable liens which may attach to the New Facility or the Facility Site, which shall at all times remain the property of the United States in trust for the Band; provided however, the Band may grant liens and security interests pertaining to the Enterprise and the New Facility with the prior written consent of the Manager, which may be granted or withheld in Manager's sole discretion.

9.7 Brokerage. Manager and the Band represent and warrant to each other that neither has sought the services of a broker, finder or agent in this transaction, and neither has employed, nor authorized, any other Person to act in such capacity, except that the Developer has retained the services of Pauma Properties for the limited purpose of assisting the Developer and the Band in acquiring the Land. Manager and the Band each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other party as a result of a claim brought by a Person engaged or claiming to be engaged as a finder, broker or agent by the indemnifying party.

#### ARTICLE 10. DEFAULT

10.1 Events of Default by the Band. Each of the following shall be an event of default by the Band under this Agreement ("Band Event of Default"):

- (a) The Band shall commit a Material Breach of any of the Band's

obligations under this Agreement or any other Transaction Documents, subject to the rights to cure provided in this Agreement or in any of such documents.

(b) Any of the representations and warranties made by the Band in this Agreement or in any other Transaction Documents were not true in any material respect when made or would not be materially true if made on the date such performance would otherwise be due.

(c) The Band commits any Material Breach of the Development Agreement which is not cured within any applicable cure period.

If any Band Event of Default occurs, Manager may, upon written notice to Band, exercise the rights and remedies available to Manager provided in this Agreement and otherwise available to it at law; provided, however, that all such rights and remedies shall be Limited Recourse.

10.2 Events of Default by Manager. Each of the following shall be an event of default by Manager under this Agreement ("Manager Event of Default"):

(a) Any Minimum Guaranteed Monthly Payment, Monthly Distribution Payment or other payment due the Band under this Agreement is not paid within thirty (30) days after its due date.

(b) Manager shall commit any other Material Breach of any of Manager's obligations under this Agreement or any other Transaction Documents, as applicable.

(c) Any representation or warranty that Manager has made under this Agreement or any other Transaction Document shall prove to have been untrue in any material respect when made or would not be materially true if made on the date such performance would otherwise be due.

(d) NIGC Disapproval occurs.

(e) Manager violates any Legal Requirements in the management of the Enterprise, including without limitation the Gaming Ordinance, and such violation is not cured within (i) thirty (30) days after notice, as to the Gaming Ordinance or any other gaming laws or regulations, or (ii) within a reasonable period, not to exceed ninety (90) days, as to any other Legal Requirements.

If any Manager Event of Default occurs, the Band may, upon written notice to Manager, exercise the rights and remedies available to the Band provided in this Agreement.

10.3 Material Breach: Right to Cure.

(a) Neither Manager nor the Band may terminate this Agreement, recover damages or foreclose on security interests on grounds of a potential Material Breach of this Agreement or any other Transaction Document unless it has provided written notice to the other party of its intention to terminate this Agreement, seek damages or foreclose. During the thirty (30) day period after the receipt of the notice to terminate (as to defaults which can be cured within thirty (30) days) or the ninety (90) day period after such receipt (as to defaults which cannot be cured within thirty (30) days), whichever is applicable, the party receiving the notice may cure the alleged default and (without waiting for the expiration of such periods) any party may submit the matter to arbitration under the dispute resolution provisions of this Agreement set forth in Article 12. The discontinuance or correction of a Material Breach shall constitute a cure thereof. Nothing in this section shall prevent a party from taking such actions within such thirty (30) or ninety (90) day periods as may be permitted or required by this Agreement, the Gaming Ordinance or NIGC regulations. The provisions of this subsection shall control over any conflicting provisions in any other Transaction Document.

(b) Nothing in this subsection 10.3 shall apply to termination under Sections 11.1, 11.2 or 11.7 of this Agreement.

#### ARTICLE 11. TERMINATION

11.1 Voluntary Termination. This Agreement may be terminated by mutual written consent.

11.2 Termination if No NIGC Approval. The Band and Manager may each unilaterally terminate this Agreement by written notice if NIGC Approval has not occurred within [ ] after execution of this Agreement. 64

11.3 Termination if Project Not Feasible. Manager shall be entitled to terminate this Agreement at any time prior to the Commencement Date if Manager, in its sole discretion, determines (a) that the Project is not feasible or (b) that after making good faith and reasonable efforts to comply with the applicable licensing requirements, Manager is not able to be licensed by the TGA and the State pursuant to the Gaming Ordinance and the Compact; or (c) that Manager's participation in the Project may affect the Manager's ability to be licensed in other jurisdictions.

11.4 Manager's Right to Terminate on Band Event of Default. Subject to the provisions of Section 10.3 and Article 12, Manager shall be entitled to terminate this Agreement (a) upon a Band Event of Default or (b) otherwise, as specifically provided in this Agreement.

11.5 Band's Right to Terminate on Manager Event of Default. Subject to the provisions of Section 10.3 and Article 12, the Band shall be entitled to terminate this

Agreement (a) upon a Manager Event of Default or (b) otherwise, as specifically provided in this Agreement.

11.6 Termination if Manager License Withdrawn or on Conviction of Senior Manager. The Band may terminate this Agreement immediately where Manager has had its gaming license or management certification withdrawn in any jurisdiction by final administrative action, after completion of judicial review or expiration of the time for seeking such review and any appeals therefrom. The Band may also terminate this Agreement if any Senior Employee, any director or officer of Manager, has been convicted of a criminal felony or a criminal misdemeanor offense involving gaming, fraud or moral turpitude; provided, however, the Band may not terminate this Agreement based on a Senior Employee, director or officer's conviction where Manager terminates such individual within ten (10) days after receiving notice of the conviction.

11.7 Involuntary Termination Due to Changes in Legal Requirements. It is the understanding and intention of the parties that the development, construction and operation of the Enterprise shall conform to and comply with all Legal Requirements. If during the term of this Agreement, the Enterprise or any material aspect of Gaming at the Facility Site is determined by the Congress of the United States, Department of the Interior of the United States of America, the NIGC, or the judgment of a court of competent jurisdiction (after expiration of the time within which appeals must be filed or completion of appeals, if any) to be unlawful under federal law, the obligations of the parties hereto shall cease and this Agreement shall be of no further force and effect as of the date of such determination; provided, however, that if the date of such determination is after the Commencement Date:

(a) The Band shall retain all Tribal Distributions and the Facility Site and any other property transferred into trust;

(b) Any money loaned to the Band by the Manager and any other obligations owed to Manager under the Transaction Documents as of the date of such determination shall be repaid to Manager in accordance with the Limited Recourse terms the Facility Note, the Manager Working Capital Advance Note, the Minimum Payments Note and any other applicable Transaction Documents; and

(c) The Manager shall have the right to exercise its rights against the Collateral to secure repayment of all amounts due from the Band to the Manager; and

(d) Any Net Revenues of the Enterprise accruing through the date of termination shall be distributed in accordance with Article 5 of this Agreement.

ARTICLE 12. DISPUTE RESOLUTION AND BAND'S  
WAIVER OF SOVEREIGN IMMUNITY

12.1 Dispute Resolution and Band's Waiver of Sovereign Immunity and Consent to Suit. Disputes between the Band and Manager with respect to this Management Agreement, any other Transaction Documents, or a party's performance thereunder, shall be resolved by the following dispute resolution process and pursuant to the Band's limited waiver of sovereign immunity contained in this Section 12.1. Disputes between the Band and Manager relating to actions of the TGA that affect Manager, including but not limited to actions of the TGA to deny, revoke or suspend a license that has been applied for or issued to Manager, or any Affiliates, employees, officers, directors, or owners of Manager who are subject to licensing, shall be subject to the provisions of this Article 12, as specifically modified by Section 12.6.

(a) The parties shall first meet and confer in a good faith attempt to resolve the dispute through negotiations not later than ten (10) calendar days after receipt of written notice of the dispute, unless both parties agree in writing to an extension of time.

(b) If the dispute is not resolved to the satisfaction of the parties within fifteen (15) calendar days after the first meeting in subsection (a) above, then any claim, controversy or dispute (collectively "Claims") arising out of or relating to this Management Agreement, any other Transaction Document, or any alleged default thereunder or breach of any provisions thereof shall be submitted to binding arbitration as set forth below; except that: either party may initiate judicial proceedings before any state or federal court of competent jurisdiction convenable in San Diego County, California and all courts to which appeals from any such courts may be taken (collectively, such courts being "Agreed Courts") (x) to determine the arbitrability of any Claim, compel such arbitration or enforce modify or vacate any related arbitration award related to this Management Agreement or any other Transaction Document; and (y) for the purpose of actions for injunctive relief, including without limitation injunctions prohibiting a party from taking any action arising out of or relating to this Agreement or the other Transaction Documents, or mandating or obligating a party to take any such action from any court of competent jurisdiction before, after or during the pendency of any arbitration proceeding. The Band expressly waives its sovereign immunity from suit for the purposes described in this Section 12.1, and consents to be sued in any Agreed Courts. The Band and the Manager hereby consent to and waive any objection to the personal jurisdiction and venue of the Agreed Courts and waive any claim that the Agreed Courts constitute an inconvenient forum. If such judicial proceedings are instituted in the Agreed Courts the parties agree that any such proceeding shall not be stayed pending the outcome of any arbitration proceedings hereunder.

(c) The Band waives any requirement of exhaustion of tribal remedies, abstention or comity and waives any right or claim to have this Agreement or the other Transaction Documents or any Claims arising thereunder be subject to the jurisdiction or enforcement of any subsequently created tribal court of the Band or other judicial body of



the Band. Without in any way limiting the generality of the foregoing, the Band expressly authorizes the Manager or any Governmental Authority who have the right and duty under applicable law to take any action authorized or ordered by any such court, to take such action, including without limitation, repossessing or foreclosing on any real property not in trust and or on equipment or other Collateral subject to a security interest or on the Cash Collateral Account, or otherwise giving effect to any judgment entered; provided, however, that liability of the Band under any judgment shall always be Limited Recourse, in no instance shall any enforcement of any kind whatsoever be allowed by Manager against any assets of the Band other than the Collateral, and in no instance shall any enforcement of any kind whatsoever be allowed by Manager against any assets of the Band prior to the Commencement Date.

12.2 Binding Arbitration. Except as described in Section 12.1(b), Claims not resolved during the meet-and-confer process shall be resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association in effect at the time of submission and shall be heard in San Diego County, California. The costs and expenses of any arbitrator shall be borne by the party appointing such arbitrator, except that the costs and expenses of any arbitrator jointly named or appointed as a third arbitrator shall be borne fifty percent (50%) by the Band and fifty percent (50%) by Manager, provided that such arbitrator, as part of his/her decision, may award costs (including attorneys' fees) to the prevailing party if such arbitrator believes that a party has not brought or prosecuted such a claim in good faith.

(a) Either party may, at any time prior to the selection of an arbitrator or arbitrators, require that the arbitrator or arbitrators selected be an attorney or attorneys licensed to practice law in the United States and that the attorneys have experience in Indian gaming regulatory and development issues.

(b) The parties shall jointly appoint a single arbitrator within fifteen (15) days of the end of the ten (10) day period referenced in subsection (a) above. If the parties fail jointly to appoint a single arbitrator within said fifteen (15) day period, either party may appoint one arbitrator by notice to the other such party, and the other party shall name a second arbitrator within fifteen (15) days after receipt of such notice, whereupon the two arbitrators so named shall jointly select a third arbitrator within fifteen (15) days after the date of appointment of the second arbitrator, failing which the third arbitrator shall be appointed by the President of the American Arbitration Association. In the event that any party entitled to name the second arbitrator as set forth in this subsection (e) fails to do so within the time period provided herein, the arbitrator appointed by the other party shall be the sole arbitrator. Any arbitrator or arbitrators shall promptly conduct an arbitration, and render a decision resolving the dispute, and the parties agree to abide by the decision of any single arbitrator or by a decision of a majority of any three arbitrators appointed as aforesaid.



(c) The parties shall maintain strict confidentiality with regard to any arbitration. The parties may engage in discovery in accordance with the Federal Rules of Civil Procedure, subject to supervision as to scope and appropriateness by the arbitrators; notwithstanding the generality of the foregoing, the parties and the TGA shall not be required to release any documents, information or material if the arbitrator or arbitrators determine that the disclosure of such documents, information or material is prohibited by federal or state law. In determining any matter the arbitrator(s) shall apply the terms of this Agreement, without adding to, modifying or changing the terms in any respect, and in their interpretation and construction shall, to the extent not preempted by federal law, apply California law, provided, however, that Article XV of the Constitution of the State of California or any other present or future provision of the law of California that would restrict the rate of interest upon any loan contemplated hereunder shall not apply to this Agreement or the Transaction Documents and shall have no force or effect hereunder or thereunder. The arbitration award shall be in writing signed by each arbitrator, and shall state the basis for the award. The arbitration award shall be set forth in reasonable detail as to its findings of fact and law, and basis of determination of award form and amount. In connection with any arbitration award, the arbitrator(s) shall be empowered to take the actions and enforce the judicial remedies described in the Band's waiver of sovereign immunity in this Section 12; provided however, that although the arbitrator(s) may award actual and consequential damages only (not indirect or punitive damages) to either party, in the event the Band or the Tribal Gaming Authority chooses not to comply with the award, the arbitrator(s) may not require the Band or the Tribal Gaming Authority to take or modify any Band Governmental Action which the arbitrator(s) have determined has resulted in the dispute between the parties and is contrary to the parties' rights, liabilities and obligations under this Management Agreement, or any other Transaction Document (the "Specific Performance Restriction"). Provided further, that: (i) should the arbitrators determine that the Band Governmental Action in dispute has been made in an unreasonable manner and if the Band or Tribal Gaming Authority shall not reverse such Band Governmental Action, then the arbitrators shall award actual and consequential damages only (not indirect or punitive damages) to Manager or other claimant, as applicable, for damages suffered as a consequence of the Band Governmental Action; and (ii) that the Specific Performance Restriction shall not prevent Manager or any other party from enforcing its rights under any Loans or against any Collateral, including the Cash Collateral Accounts.

(d) Except to the extent such enforcement will be inconsistent with a specific provision of this Management Agreement, arbitration awards made pursuant to this Article 12 shall be enforceable under Title 9 of the United States Code and any applicable, federal or state law governing the enforcement of arbitration awards.

(e) In addition to any basis for appeal of an arbitration award stated in Title 9 of the United States Code or any applicable law governing the enforcement of arbitration awards, either party hereto may appeal an arbitration award on the basis that

the arbitrator or arbitrators incorrectly decided a question of law in making the award, or the award was made in an arbitrary or capricious manner or in manifest disregard of the factual evidence.

12.3 No Effect on UCC Rights. The provisions of this Article 12 do not limit the Manager's right to exercise remedies available under the California UCC. Manager agrees to notify the Chairman of the Board of Directors before exercising any non-judicial remedies that require entry upon the Band's real property. Nothing in this section shall limit the right of the Manager to exercise self-help remedies such as setoff or the right of the Manager or the Band to seek provisional or ancillary remedies (including, by way of illustration but not limitation, preliminary injunctive orders or orders of attachment) from any court of competent jurisdiction before, after or during the pendency of any arbitration proceeding, as may be reasonably required to protect such Person's interests pending final conclusion of such arbitration proceeding, including any judicial action required to enforce any award or order from such arbitration proceeding.

12.4 Undistributed Net Revenues. If on termination the Enterprise has accrued Net Revenues which have not been distributed under Article 5 of this Agreement, Manager shall receive that Management Fee equal to the Management Fee it would have received for the period prior to termination had the distribution occurred during the term of the Management Agreement.

12.5 Damages for Governmental Action. If the Band takes a Band Governmental Action or fails to take a Band Governmental Action, and such action or inaction is not caused by a breach of Manager's obligations under this Agreement and constitutes a breach of this Agreement by the Band or the impairment of rights of Manager under this Agreement, the Band shall be liable for any resulting actual and consequential damages (not indirect or punitive damages) incurred by Manager (subject to the Limited Recourse provisions of this Agreement and the limited waiver of the Band's sovereign immunity).

12.6 Damages for Actions of the TGA.

(a) Manager agrees that actions or decisions of the TGA that relate to Manager, including but not limited to actions of the TGA to deny, revoke or suspend a license that has been applied for or issued to Manager, or any Affiliates, Senior Employees, officers, directors, or owners of Manager who are subject to licensing (any such licensing decision or action, a "Manager Licensing Decision"), must be reviewed pursuant to the review process set forth in the Gaming Ordinance, and final decisions thereunder are not subject to modification or reversal by the arbitrator or arbitrators pursuant to the arbitration process set forth in this Article 12. Notwithstanding the foregoing restriction on modification or reversal of such decisions, following any final ruling by any review or appellate body of the Band with the authority to rule on or review

such TGA actions or decisions, if a dispute arises from (i) a Manager Licensing Decision, (ii) a decision or action that materially affects the Manager's ability to act in accordance with the terms of this Agreement, or (iii) a decision or action that impairs the Manager's ability to receive its fees or to collect principal and interest on any loans made hereunder, then the Manager and/or the Band shall be permitted to submit any such disputes to arbitration in accordance with the terms of this Article 12 and any such final decision of the TGA relating to Manager, or any failure to act in a timely manner by any body of the Band with authority to review TGA decisions, is subject to an award of damages to Manager pursuant to Section 12.5.

(b) In reviewing TGA actions and decisions pursuant to this Section 12.6, the arbitrator or arbitrators may not make an award of damages to Manager under Section 12.5 unless:

- (i) The TGA action or decision is in excess of its jurisdiction or authority; or
- (ii) The TGA or any appellate body of the Band with the authority to rule on or review such TGA actions or decisions did not conduct a fair hearing or trial on the issue; or
- (iii) The TGA action or decision constitutes an abuse of discretion.

(c) Abuse of discretion is established if:

- (i) the TGA has not proceeded in the manner required by the Gaming Ordinance, the Compact, this Agreement or by any other Legal Requirements; or
- (ii) the TGA decision or action is not supported by the evidence; or
- (iii) the TGA decision or action is made or motivated by facts or circumstances that are not substantially related to the relevant criteria or requirements set forth in the Gaming Ordinance or the Compact.

(d) If the Manager claims that the TGA decision or action is an abuse of discretion and if the TGA action or decision (i) is a Manager Licensing Decision, (ii) materially affects the Manager's ability to act in accordance with the terms of this Agreement, or (iii) impairs the Manager's ability to receive its fees or to collect principal and interest on any loans made hereunder, the arbitrator or arbitrators shall conduct a de novo hearing on the evidence and exercise independent judgment on the evidence disclosed to the arbitrator or arbitrators in such hearing. Abuse of discretion in this case

is established if the arbitrator or arbitrators determine that the TGA's decision or action is not supported by the weight of the evidence, or is made or motivated by facts or circumstances that are not substantially related to the relevant criteria or requirements set forth in the Gaming Ordinance or the Compact.

#### ARTICLE 13. CONSENTS AND APPROVALS

13.1 Band. Where approval or consent or other action of the Band is required, such approval shall mean the written approval of the Board of Directors evidenced by a resolution thereof, certified by a Band official as having been duly adopted, or such other Person designated by resolution of the Board of Directors. Any such approval, consent or action shall not be unreasonably withheld or delayed.

13.2 Manager. Where approval or consent or other action of Manager is required, such approval shall mean the written approval of the General Manager. Any such approval, consent or other action shall not be unreasonably withheld or delayed.

#### ARTICLE 14. DISCLOSURES

14.1 Members and Managers. Manager warrants that on the date of this Agreement its Affiliates, managers, officers and members owning five percent (5%) or more of the membership interests or equity interests are those listed on Exhibit I.

14.2 Warranties. Manager further warrants and represents as follows:

(a) No officer, director or individual owner of five percent (5%) or more of the membership interests or equity interests of Manager, or any Affiliate of Manager, has been arrested, indicted for, convicted of, or pleaded nolo contendere to any felony or any gaming offense, or had any association with individuals or entities known to be connected with organized crime; and

(b) Manager agrees that all of its managers and officers and any individual owners of five percent (5%) or more of the membership interests or equity interests of Manager, shall:

(i) consent to background investigations to be conducted by the Band, the State, the Federal Bureau of Investigation (the "FBI") or any law enforcement authority to the extent required by the IGRA and the Compact;

(ii) be subject to licensing requirements in accordance with Band law and this Agreement;

(iii) consent to a background, criminal and credit investigation to be conducted by or for the NIGC, if required;

- (iv) consent to a financial and credit investigation to be conducted by a credit reporting or investigation agency at the request of the Band;
- (v) cooperate fully with such investigations; and
- (vi) disclose any information requested by the Band which would facilitate the background and financial investigation.

Any materially false or deceptive disclosures or failure to cooperate fully with such investigations by an employee of Manager or an employee of the Band shall result in the immediate dismissal of such employee. The results of any such investigation may be disclosed by the Band to federal officials and to such other regulatory authorities as required by law.

#### ARTICLE 15. NO PRESENT LIEN, LEASE OR JOINT VENTURE

15.1 The parties agree and expressly warrant that neither this Agreement nor any exhibit thereto is a mortgage or lease, or a lien or encumbrance (including any mortgage or lease as contemplated by 25 U.S.C. § 415, or any lien or encumbrance as contemplated by 25 U.S.C. §81) and, consequently, does not convey any present interest whatsoever in the New Facility or the Facility Site, nor any proprietary interest in the Enterprise itself; except, with regard to the Collateral, including the Cash Collateral Accounts, the security interest created by the Manager Account Control Agreement and, with regard to the Furnishings and Equipment, the security interest created by the Manager Security Agreement. The parties further agree and acknowledge that it is not their intent, and that this Agreement shall not be construed, to create a joint venture between the Band and Manager, and neither shall have the power to bind or obligate the other except as set forth in this Agreement; rather, Manager shall be deemed to be an independent contractor for all purposes hereunder.

#### ARTICLE 16. CONCLUSION OF THE MANAGEMENT TERM

16.1 Upon the conclusion or the termination of this Agreement, Manager shall take reasonable steps for the orderly transition of management of the Enterprise to the Band or its designee pursuant to a transition plan; such transition period shall be for a reasonable period but not less than sixty days. Manager shall cooperate fully with the Band in that regard. No later than four months before the expiration of the Term of this Agreement, Manager shall submit to the Board of Directors a transition plan which shall be sufficient to allow the Band to operate the Enterprise and provide for the orderly transition of the management of the Enterprise. Notwithstanding the foregoing, if the Band terminates this Agreement for any reason prior to the expiration of the Term or if the Manager terminates this Agreement pursuant to Section 11.4 hereof, the Manager shall have no obligation to assist with the transition of the management of the Enterprise and shall have not other obligations under this Section 16.1.



## ARTICLE 17. MISCELLANEOUS

17.1 Situs of the Contracts. This Agreement, as well as all contracts entered into between the Band and any Person providing services to the Enterprise, shall be deemed entered into in the State of California.

17.2 Notices. All notices, requests and other communications to any party hereunder shall be in writing, may be personally served or sent by telefacsimile, mail or the express mail service of the United States Postal Service, Federal Express or other equivalent overnight or expedited delivery service, and (a) if given by personal service, or telefacsimile (confirmed by telephone), it shall be deemed to have been given upon receipt; (b) if sent by mail, it shall be deemed given upon actual receipt; or (c) if sent by Federal Express, the express mail service of the United States Postal Service or other equivalent overnight or expedited delivery service, it shall be deemed given upon the earlier of (i) actual receipt or (ii) on the next Business Day after delivery to such overnight or expedited delivery service, delivery charges prepaid, and properly addressed to the Band or the Manager. For purposes hereof, the address of the parties to this Agreement shall be as follows:

If to the Band: Pauma Band of Mission Indians of the Pauma-Yuima  
Reservation  
P.O. Box 369  
Pauma Valley, CA 92061  
Attn: Chairman Chris Devers  
Fax: (760) 742-3422

with a copy to: Mark Radoff, Esq.  
Directing Attorney  
California Indian Legal Services  
609 South Escondido Blvd.  
Escondido, CA 92025  
Fax: (760) 746-1815

If to the Manager: Foxwoods Management Pauma, LLC  
P.O. Box 3777  
Rt. 2  
Mashantucket, CT 06338  
Attn: John O'Brien  
Fax: (860) 312-3329



with a copy to: Robert L. Gips, Esq.  
Drummond Woodsum & MacMahon  
245 Commercial Street  
P.O. Box 9781  
Portland, ME 04104-5081  
Fax: 207-772-3627

Any party may, by proper written notice hereunder to the other party, change the address to which notices shall thereafter be sent to it. Notwithstanding anything to the contrary implied or expressed herein, the notice requirements herein (including the method, timing or deemed giving of any notice) are not intended to and shall not be deemed to increase the number of days or to modify the method of notice or to otherwise supplement or affect the requirements for any notice required or sent pursuant to applicable law (including, without limitation, any applicable statutory or law requirement), or otherwise given hereunder, that is not required under this Agreement.

17.3 Relationship. Manager and the Band shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

17.4 Further Actions. The Band and Manager agree to execute or cause to be executed all contracts, agreements and documents and to take all actions reasonably necessary to comply with the provisions of this Agreement and the intent hereof.

17.5 Waivers. No failure or delay by Manager or the Band to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

17.6 Captions. The captions of each article, section and subsection contained in this Agreement are for ease of reference only and shall not affect the interpretational meaning of this Agreement.

17.7 Severability. If any provision, or any portion of any provision, of this Agreement is found to be invalid or unenforceable, such unenforceable provision, or unenforceable portion of such provision, shall be deemed severed from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of

this Agreement. If any provision, or any portion of any provision, of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

17.8 Advances. Except as provided in Section 5.9 with regard to Minimum Guaranteed Payment Advances or as otherwise provided in this Agreement, any amounts advanced by Manager or the Band related to the operation of the Enterprise shall accrue interest at the Band Interest Rate and shall be treated according to GAAP.

17.9 Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

17.10 Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

17.11 Estoppel Certificate. Manager and the Band agree to furnish to the other party, from time to time upon request, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Enterprise as may be reasonably requested.

17.12 Periods of Time: Time of Essence. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the Band or the State, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Time is of the essence.

17.13 Exhibits. All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

17.14 Successors and Assigns. The benefits and obligations of this Agreement shall inure to and be binding upon the parties hereto and their respective permitted successors and assigns, provided, however, that this Agreement shall not be assigned by either party hereto without the written consent of the other party, except as otherwise provided herein.

17.15 Confidential and Proprietary Information. The Band and Manager each agree that any information received concerning the other party during the performance of this Agreement, regarding the parties' organization, financial matters, marketing and development plans for the Enterprise, the Facility Site, or other information of a proprietary nature (the "Confidential Information") will be treated by all parties in full

confidence and except as required to allow Manager and the Band to perform their respective covenants and obligations hereunder, or in response to legal process, and will not be revealed to any other Persons. The obligation not to use or disclose the Confidential Information shall not apply to Confidential Information (a) which has been made previously available to the public by the Band or Manager or becomes generally available to the public, unless the Confidential Information being made available to the public results in a breach of this Agreement; (b) which prior to disclosure to the Band or Manager was already rightfully in any such Persons' possession; (c) which is obtained by the Band or Manager from a third party who is lawfully in possession of such Information, and not in violation of any contractual, legal or fiduciary obligation to the Band or Manager, with respect to such Confidential Information; or (d) which is disclosed pursuant to legal process, provided that the party served with such process shall notify the other of such service and provide the other with an opportunity to contest such process. Notwithstanding the foregoing or any other provision of this Agreement, the Band and the Manager acknowledge that each will suffer irreparable injury, not readily susceptible of valuation in monetary damages, if either the Band or the Manager breach its obligations under this Section 17.15 hereof. Accordingly, the parties hereto hereby agree that each party shall have the right (but not the obligation) to institute judicial proceedings in a Court of competent jurisdiction within the State, in the federal or state courts located in the State, to seek permanent or temporary injunctive relief for violations, or alleged violations, by the other party of its obligations under this Section 17.15 hereof with out the necessity of proving actual damages, in addition to any other relief (including damages) available to such party under this Agreement or under law. The parties hereto hereby consent to and waive any objection to the subject matter jurisdiction, personal jurisdiction and venue of the aforesaid Courts and waive any claim that the aforesaid Courts constitute an inconvenient forum. If such judicial proceedings are instituted, the parties agree that any such proceeding shall not be stayed pending the outcome of any arbitration proceedings hereunder.

17.16 Patron Dispute Resolution. Manager shall submit all patron disputes concerning play to the Tribal Gaming Authority pursuant to the Gaming Ordinance, and the regulations promulgated thereunder.

17.17 Modification. Any change to or modification of this Agreement must be in writing signed by both parties hereto and shall be effective only upon approval by the Chairman of the NIGC, the date of signature of the parties notwithstanding.

17.18 Governing Law. The interpretation and construction of this Agreement shall, to the extent not preempted by federal law, be governed by the law of California, provided, however, that Article XV of the Constitution of the State of California or any other present or future provision of the law of California that would restrict the rate of interest upon any loan contemplated hereunder shall not apply to this Agreement or the Transaction Documents and shall have no force or effect hereunder or thereunder.

17.19 Waiver of Jury Trial. THE MANAGER AND THE BAND AGREE THAT NEITHER OF THEM NOR ANY ASSIGNEE OR SUCCESSOR SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR OTHER ACTION RELATING TO THIS AGREEMENT, THE NOTES, OR ANY RELATED INSTRUMENTS, OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE MANAGER AND THE BAND, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER THE MANAGER NOR THE BAND HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

17.20 Entire Agreement.

(a) This Agreement and the Transaction Documents are the entire agreement between Manager and the Band relating to management of the Enterprise and supercedes all prior management agreements and understandings, whether written or oral, between or among the Band and Manager. All prior and contemporaneous conversations, discussions, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. Manager and the Band each affirmatively represents that no promises have been made to that party which are not contained in this Agreement, or any other Transaction Documents and documents referred to herein and therein, and stipulates that no evidence of any promises not contained in this Agreement or any other Transaction Documents shall be admitted into evidence on their behalf. The Development Agreement and other agreements between Developer and the Band do not constitute a part of this Agreement.

(b) This Agreement shall not be supplemented, amended or modified by any course of dealing, course of performance or uses of trade and may only be amended or modified by a written instrument duly executed by officers of all parties.

17.21 Government Savings Clause. The Band and Manager each agree to execute, deliver and, if necessary, record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, the office of the field Solicitor, the NIGC, or any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations, liens and interests of the parties hereto to the fullest extent permitted by law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of the Band or

Manager under this Agreement or any other agreement or document related hereto.

17.22 Preparation of Agreement. This Agreement was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either party.

17.23 Consents. Except where expressly indicated that an agreement or consent is in the sole or unilateral discretion of a party, no agreement or consent under this Agreement shall be unreasonably withheld or delayed.

17.24 Execution. This Agreement may be executed in four counterparts, two to be retained by each party. Each of the four originals is equally valid. This Agreement shall be binding upon both parties when properly executed and approved by the Chairman of the NIGC (the "Effective Date").

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESS:

PAUMA BAND OF MISSION INDIANS  
OF THE PAUMA-YUIMA RESERVATION

Tameth. Maje

By: Chris Dennis  
Its: Chairman

FOXWOODS MANAGEMENT PAUMA, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Gary D. Armentrout  
Its: Manager

Approved pursuant to 25 U.S.C.  
Section 2711

NATIONAL INDIAN GAMING  
COMMISSION

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: Chairman



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

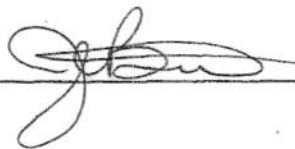
WITNESS:


PAUMA BAND OF MISSION INDIANS  
OF THE PAUMA-YUIMA RESERVATION

\_\_\_\_\_

By: \_\_\_\_\_  
Its: Chairman

FOXWOODS MANAGEMENT PAUMA, LLC

  
\_\_\_\_\_

By:   
Gary D. Armentrout  
Its: Manager

Approved pursuant to 25 U.S.C.  
Section 2711

NATIONAL INDIAN GAMING  
COMMISSION

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: Chairman

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WITNESS:

PAUMA BAND OF MISSION INDIANS  
OF THE PAUMA-YUIMA RESERVATION

Lemeth. Mayo

By: Chris Dennis  
Its: Chairman

FOXWOODS MANAGEMENT PAUMA, LLC

Gary D. Armentrout

By: Gary D. Armentrout  
Gary D. Armentrout  
Its: Manager

Approved pursuant to 25 U.S.C.  
Section 2711

NATIONAL INDIAN GAMING  
COMMISSION

By: Philip N. Hogen  
Print Name: Philip N. Hogen  
Its: Chairman

May 15, 2008